



ANTI-CORRUPTION REFORMS IN BULGARIA

Coalition 2000 is a Bulgarian public-private partnership against corruption. Launched in 1997, the Coalition has been one of the primary agents of change towards improved transparency and integrity in government. The experience of *Coalition 2000* suggests that a combination of public-private cooperation in setting an anti-corruption agenda for society and a system for monitoring the level of corruption of public administration are prerequisites both for designing the long term assistance strategy and for evaluating its impact.

This report makes a thorough review of anticorruption reforms in Bulgaria since 1997. It offers an analysis of the range, level and dynamics and presents the main achievements and challenges of the anti-corruption process. It highlights the present-day challenges that Bulgaria should meet with its upcoming accession to the EU, such as overcoming its structural and institutional failures, the effective operation of the judiciary and law-enforcement, and organized crime and gray economy which generate corruption practices.

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CONTENTS

Introduction	5
1. Corruption Monitoring System of <i>Coalition 2000</i> – Its Anti-Corruption Role and Main Results	15
1.1. Level of Corruption – Sustainable Reduction and New Challenges	18
1.2. Corruption Pressure and Assessments of the Spread of Corruption among Professional Groups.	22
1.3. Public Attitudes to Corruption	24
2. Building a National Anti-Corruption Infrastructure: Strategies, Institutions, Legislation and Implementation (1997 – 2004).	29
2.1. National Anti-Corruption Strategy and Implementation Program.	30
2.2. Government Institutions in the Fight against Corruption	33
2.2.1. The Legislature.	33
2.2.2. The Executive Branch.	36
2.2.3. The Role of the Judiciary	38
2.3. Specialized Oversight Mechanisms.	44
2.4. Legislative Measures to Combat Corruption	45
2.4.1. Criminal Law Instruments	45
2.4.2. Other Legislative Measures to Curb and Prevent Corruption	47
2.5. Better Access to and Quality of Public Services as a Prerequisite for Reducing Corruption	50
2.5.1. Introducing New Information Technologies in Administrative Service Delivery	51
2.5.2. Codes of Ethics in the Administration	53
3. The Beginning of Anti-Corruption Reform in the Judiciary and in Law Enforcement.	55
3.1. Civic Initiatives and Government Programs.	56
3.2. Constitutional and Legislative Measures.	59

3.3.	Mechanisms to Combat Judicial Corruption and Ensure the Financial Independence of the Judiciary	63
3.4.	Anti-Corruption Reform in the Ministry of Interior	68
4.	Corruption and Economic Development	73
4.1.	Corruption, the Regulatory and Tax Burden, and the Hidden Economy	75
4.1.1.	Tax Burden	78
4.1.2.	Regulatory Burden	82
4.2.	Corruption, Smuggling, and Customs Reform	87
4.3.	Privatization and Anti-Corruption	90
4.4.	Corruption and Public Procurement	96
4.5.	Corruption and Anti-Corruption in the Private Sector	101
5.	Civil Society against Corruption	105
5.1.	Non-Governmental Organizations and Anti-Corruption Reforms	105
5.1.1.	Public-Private Partnership	106
5.1.2.	<i>Coalition 2000</i>	108
5.2.	The Role of Media in Anti-Corruption	109
5.3.	Anti-Corruption Education	113
6.	Conclusion	115

INTRODUCTION

The long delay in political and economic reforms in Bulgaria in the early 1990s produced a serious institutional and legal deficit that significantly increased the corruption potential in society and ultimately led to the crisis of late 1996 and early 1997. Owing to the urgency of the political, economic, and social problems in that period, corruption did not attract much public attention and was not a subject of research and assessment. After 1997, it gradually emerged as an important issue in the public, political, and economic life of Bulgaria. With the beginning of political stabilization and the acceleration of economic reforms, there was an intensification of the process of sweeping redistribution of national wealth. Corrupt practices became a key mechanism for gaining specific advantages in this process, as well as for the accumulation of capital and transfer of resources from the state/public sector to the private one. Numerous organized criminal interests acquired powerful positions in the economic and political life of the country and strove to preserve and expand them by resorting to corrupt practices at all state levels. The spread of corruption became visible, permanently destabilizing the institutions and deforming the political process.

In this situation, the **Bulgarian civil society initiated the public debate on corruption and a number of non-governmental organizations placed anticorruption at the center of their activity.** Since 1997 a leading role in this process has been played by *Coalition 2000*. This initiative brought together for the first time non-governmental organizations, government institutions and media with the aim of curbing corruption. Unique instruments, mechanisms and practices of public-private partnership were developed within its framework in the quest for anticorruption solutions. In addition to a committed and active civil society, the progress of anticorruption reforms also depended on another two essential preconditions that were created in 1997. **First**, there was a **reform-minded government** aware of the corruption problems of the country and implementing a proactive anticorruption policy. **Secondly, strong international concern** about reducing corruption as an indispensable condition for Bulgaria's accession to NATO and the European Union. In this context, a number of international institutions, among which most notably the United States Agency for International Development (USAID), encouraged and offered practical support for the anticorruption reforms.

Combating Corruption in Bulgaria through Public-Private Partnerships

Coalition 2000 is one of the most prominent examples of a public-private partnership in the area of anticorruption in South Eastern Europe. *Coalition 2000* was established in 1997 by Bulgarian nongovernmental organizations to create a cooperative platform of public and private institutions. It is an all-inclusive platform combining the input and efforts of various stakeholders irrespective of their political or institutional affiliations. The partnership has developed a Corruption Monitoring System (CMS) to serve as a special tool for diagnosing corruption. [...] *Coalition 2000* also has completed a best practices initiative on a local level. [...] The anticorruption initiative promotes participation by civil society in applying mechanisms of civil control over the state, especially with respect to carrying out the National Anticorruption Strategy for Bulgaria for the period 2001–04.

The experience of *Coalition 2000* demonstrates that a determined citizenry can demand better government and turn the tables on those who are corrupt.

Source: The World Bank, Building Market Institutions in South Eastern Europe, Washington DC, 2004, p. 76.

Overall, in the period since 1997, considerable progress has been made in identifying the corruption-related problems and practices in Bulgarian society. A number of specific political, economic, and administrative measures have also been adopted and are gradually beginning to make a tangible difference on corruption prevalence. The most notable trend marking the period since 1997 has been the gradual decline of corruption. **The data of Transparency International (TI) for the period 1998-2004 indicate that, from a country with systemic corruption problems (TI index lower than 3), Bulgaria is turning into a country with a moderate spread of corruption (TI index 4.1).** Bulgaria finds itself in a more favorable situation than a number of other countries, including some current members of the European Union. For instance, in 2004, the TI Corruption Perceptions Index for Slovakia and Latvia was 4.0; for Poland, 3.5; and for Romania, 2.9. Better CPI values were registered for Bulgaria compared to other countries of Central and Eastern Europe with similar GDP per capita.

The drop in the absolute number of corruption transactions actually concluded has been significant – around twofold. Whereas in 1998, the average monthly number of instances of corrupt interaction with the self-reported involvement of adult Bulgarian citizens was in the range of 180-200,000, in 2004 it was around 80-90,000. The decline is more tangible as regards petty corruption occurring in the interaction between citizens and public administration officials. **Nevertheless, corruption in the economy still poses a serious problem and the anticorruption**

reforms in the business sector have been proceeding at a slower pace. Overall, the spread of corruption in this area exceeds more than twice the level registered among the general Bulgarian population. Following the drop in the incidence of acts of corruption and corruption pressure in the business sector observed in 2000-2002, in the past two years the respective values have remained unchanged. It should nevertheless be noted that the proportion of Bulgarian companies that have been involved in corruption deals has been decreasing.

The late 2004 was marked by stagnation and even an increase in the actual spread of corruption compared to the level reached in the beginning of the year. **This is a serious indication that the anticorruption measures taken to date are beginning to exhaust their potential.** The new challenges faced by the anticorruption efforts of the state and civil society are associated primarily with the need to overcome the structural and institutional dysfunctions, ensure effective operation of the judiciary and law-enforcement, improve the quality of public services, which should radically curb the proliferation of corrupt practices.

The anticorruption reforms in the public sphere are characterized by definite progress achieved in reducing corruption and by certain implementation problems. In this respect, it is worth noting the following:

- Bulgaria already has a **relatively well-established anticorruption infrastructure** as a result of an extensive process that begun in the second half of the 1990s at the initiative of civil society and with the support of international institutions and organizations. As a result of civil initiatives, the first strategic documents for combating corruption were developed and approved and on this basis, as well as in fulfillment of the country's international commitments, there began the gradual adoption of anticorruption legal instruments and institutional mechanisms, including specialized anticorruption commissions with each of the three branches of power. Additional impetus for this process came from the country's accession to NATO and with the progress of the EU membership negotiations.
- The action taken by the government **has largely been aimed at limiting petty corruption in the lower ranks of power and has been less concerned with counteracting high-level political corruption.** Political corruption permeates - in a different way and to a differing extent - all three branches of power and affects party and political elite representatives from the ruling majority and the opposition alike. It is harder to expose and prove this kind of corruption which necessitates specific measures. As shown by experience in other countries, however, even the implementation of these does not necessarily guarantee success in limiting political corruption. The fears that such a policy may bring about a "chain reaction" of disclosures affecting wide circles of top-level politicians largely account for the inconsistency and limited efficiency of anticorruption measures in this area.

- Bulgaria has made considerable progress in adopting **modern penal provisions concerning corruption-related offences**. Yet, their practical enforcement has largely been hampered by the inconsistent and inadequate reform of the penal process. The low effectiveness of the bodies of the judiciary in combating corruption can be accounted for by a host of factors: the frequent amendments to the penal procedural code involving reassignment of functions and prerogatives among various authorities; the lack of proper coordination between the different units of the judiciary and the other competent authorities involved in combating crime and corruption; the lack of working mechanisms for exchange of information among them; corruption in these institutions and the links of some of their representatives with organized crime, etc.
- **The number of criminal cases involving corruption-related offenses is far too low against the total number of criminal cases finalized by the courts and compared to the survey data of the actual number of corruption transactions.** While in 2003, the average monthly number of corruption deals was about 100,000, barely 75 persons were actually convicted of bribery and misuse of public office numbered. For the first half of 2004, the ratio was 80-90,000 to 71. The state has been effective in implementing its penal policy largely as regards minor cases of corruption while graver offenses, which are far more detrimental to public interests, remain unpunished. Thus, for instance, in the period from early 2002 to mid-2004, the courts imposed sentences involving imprisonment for more than three years in no more than seven bribery-related cases, and the sentence only exceeded 10 years in a single case.
- The successful counteraction to corruption and organized crime is impossible without anticorruption reforms in the judiciary. The role of the court system as the last authority in the redistribution of the national wealth and power exposes it to strong corruption pressure. **Reducing and preventing internal corruption in the judiciary is crucial for combating corruption in society as a whole.** The frequent and haphazard reforms cannot ensure efficient operation of the judicial system and effective counteraction of internal corruption. This is due to the judiciary model and structure laid down in the Constitution, as well as to the opposition of quite a few of the magistrates to the reforms and their wish to preserve the status-quo.
- The Ministry of Interior (Mol) is one of the government institutions of key importance in exposing and punishing corruption. For that reason, **combating corruption within the Ministry itself is essential for its effectiveness against corruption in the other bodies of public administration.** Overall, despite the high degree of secrecy in the operation of the Ministry, it has been providing to the public more information about its internal anticorruption measures than any other government institution. Some obvious outcomes of the steps taken are that, in the period 2003-2004, the Mol has announced the largest number of internally investigated officials and the largest number of cases involving such officials handed to the prosecution.

- The reforms in the administrative, civil, and commercial laws demonstrate definite progress towards creating a legal and institutional environment unfavorable to corruption. This has largely been due to the country's international commitments in the context of its accession to NATO and EU, as well as to the pressure from civic anticorruption initiatives. **The pace and quality of the changes and their efficient implementation** are still among the main problems of the legislative reform.
- The adoption of the **ombudsman** as an out-of-court mechanism for human rights protection and an institution with monitoring and control functions in counteracting corruption was initiated and has been supported by *Coalition 2000* since early 1998. A draft legal framework was developed for the establishment of this institution at the national and local levels and some of its essential provisions came to be incorporated in the legislation finally adopted. Although the National Assembly failed to elect a national ombudsman, serious progress has been made at the municipal level. Thanks to the cooperation between *Coalition 2000*, other civil organizations and the local authorities, in 2004 public mediators were appointed and are now operating successfully in seven municipalities.
- **Ensuring speedier, higher-quality, and more accessible administrative service delivery has led to a certain decline in corrupt practices in this area.** The gradual introduction of new information technologies is creating the conditions for radical changes in administrative service delivery to the public. Nevertheless, the bureaucratic procedures in dealings with businesses and with the public have still not been tangibly alleviated.

State intervention in the economy creates numerous points of conflict between private and public interests, which in the absence of institutional and administrative capacity and traditions are fostering an environment conducive to corruption. Corruption distorts market rules, undermines the effectiveness and utility of public services, and provides incentives to the hidden economy. Unlawful business incomes in their turn constitute a source of corruption pressure and are conducive to the emergence of a vicious circle of "corruption-hidden economy-corruption". In this respect, the most notable high-risk zones are the customs and taxation, the regulatory regimes, privatization, and public procurement.

- Along with macroeconomic stabilization, increasing international integration, liberalization of the economy, and the launch of a number of structural reforms in Bulgaria, specific measures have been taken to reduce the hidden economy and the corruption pressure it generates. **The mandatory registration of employment contracts introduced by the Ministry of Labor and Social Policy has had the most immediate and tangible impact.** The *Coalition 2000* Hidden Economy Index has registered a drop in the share of the hidden economy in the country's GDP from about one-third to approximately one-fourth between 1998 and 2004.

- Progress has been most difficult where the measures aimed against the hidden economy affect established mechanisms of political corruption. In this respect, **preserving duty-free shops at land border crossings has been a serious failure of the policy to combat the hidden economy and corruption.** These outlets constitute one of the major channels for illegal import of excise goods in the country. The illegal profits they generate serves to maintain the infrastructure of the hidden economy and to corruptly secure its political protection.
- The *Coalition 2000* Corruption Monitoring System identified the Customs Agency as one of the institutions with a significant proportion of corrupt officials. **The data reported by *Coalition 2000* that, as a result of corruption and contraband, in the period 1998-1999, the national budget suffered lost revenues of more than \$1 billion a year from the trade with the EU alone, became a major issue of the 2001 parliamentary election campaign.** By the late 1990s public pressure and above all the gradual normalization of the economy had brought down corruption in customs. A series of measures were adopted within the Customs Agency itself to reduce corruption pressure over customs officers and to limit the possibilities for customs violations such as the adoption of the Bulgarian Integrated Customs Information System (BICIS) and the expert assistance of the international consultants from Crown Agents.
- **The tax system remains seriously affected by corruption and is one area where the institutional reforms have still not been brought to completion.** According to the tax officials themselves, cases of corruption are most common in conducting regular tax control, and in terms of value, the largest corruption transactions take place in connection with tax audits. In this respect, along with the establishment of a Revenue Agency and the gradual reduction of direct income taxes, tax procedures should be tangibly simplified, codes of ethics introduced, the operation of the internal control units improved, etc.
- **Considerable potential for curbing the hidden economy and corruption lies in reducing the administrative and regulatory burden of the state.** Government efforts in this respect have mainly been focused on alleviating and reducing the number of licensing and registration regimes. These measures had but a limited anticorruption impact because the basic problem generating corrupt payments from business to public administration is the actual manner of implementation, rather than the number, of such regimes. In this respect, the adoption in June 2003 of the *Law on the Reduction of Administrative Regulation and Administrative Control of Business Activity* has been a step in the right direction. It is too early to evaluate the anticorruption effect of its implementation.
- **The privatization process in Bulgaria in the period 1997-2004 was generally conducted in a non-transparent manner, with numerous and frequent changes to the rules.** It was only with the adoption of the March 2002 *Law on Privatization and Post-Privatization Control* that a

number of recommendations by *Coalition 2000*, meant to reduce the corruption pressure in the process of denationalization, were put into practice. The negotiations with potential buyers were abolished and open tenders and the stock exchange became the priority methods of privatization, which significantly brought down the corruption pressure on the Privatization Agency and visibly improved its results as regards small-scale privatization. **Attempts to address ongoing problems and political disagreements arising in the course of large-scale privatization through legislative or administrative mechanisms deepened the legal instability of the process, created conditions conducive to corruption, and seriously impeded its objective evaluation.** The involvement of the Prosecution and the Supreme Administrative Court in the privatization of the Bulgarian Telecommunications Company and Bulgartabac Holding gave rise to justified doubts about the independence of the court system and its exposure to serious corruption and political pressure.

- **Public procurement is a major channel for transferring public funds to the private sector and one of the areas most susceptible to corruption.** In the various economic sectors, 30 to 50% of the awarded public procurement contracts involve corrupt payments. Typically, the corruption “price” is in the range of 3 to 10% of the contract value. The violations of legal public procurement procedures detected and sanctioned by the National Audit Office and the Public Internal Financial Control Agency are constantly increasing in number without producing the desired deterring effect. **The frequent amendments to the legislation in this area are not accompanied by adequate measures to establish public standards for good practices at the central and local levels and to improve specialized and civic control.**

It is impossible to foster a business environment free from corruption and hidden economy without the active cooperation of the business community. **In the context of the ever increasing share of the private sector in the economy, business and its associations are still not active enough in the anticorruption reforms.** Corruption in the private sector remains at a level comparable to that in the public sector and poses a real threat to the stability of the economy in the event of adverse external shocks.

Civil society initiated the public debate on corruption and should largely be credited for pushing the anticorruption reforms up to a whole new level. Whereas in 1997, raising public awareness of corrupt practices and problems was perceived as the main task of anticorruption efforts, subsequently the goals were redefined and prioritized developing and implementing clear-cut and practical anticorruption measures, programs, and policies. This allowed anticorruption priorities to be identified in the overall framework of democratic reforms. Civil society put forward and effectively led a public-private partnership as a fundamental approach to anticorruption. In this context, a number of **anticorruption measures and initiatives were developed in the areas of legislation, the political process, and public administration.**

- **The Corruption Monitoring System (CMS) of *Coalition 2000*** is the first of its kind initiative in the post-communist countries to combine significant research capacity and powerful anticorruption potential. Civic monitoring of corruption and above all, the quarterly *Coalition 2000* Corruption Indexes, have become an important and frequently consulted source of information on the actual levels, forms, and scale of corruption, as well as a gauge of the progress made in curbing it.
- CMS of *Coalition 2000* was further developed to provide a methodology for **regional monitoring of corruption** in the countries of Southeast Europe. This regional monitoring was conducted within the Southeast European Legal Development Initiative (SELDI) launched in late 1998. It brings together non-governmental organizations, representatives of government institutions in the region, and experts from various countries of Southeast Europe (Albania, Bosnia and Herzegovina, Bulgaria, Macedonia, Romania, Serbia and Montenegro, Croatia). The innovative approaches for the design and implementation of CMS, as well as its practical functions make it a unique and viable instrument of the comprehensive strategy for combating and reducing corruption not only in Bulgaria but also in other post-socialist societies in transition.
- **Non-governmental experts are now involved in the discussion and adoption of draft laws and comprehensive measures and programs aimed at preventing and reducing corruption.** Joint forums were also created between NGOs and the business community for cooperation in the process of development of common mechanisms for assessment and counteraction of corruption. A number of civic organizations have been exercising civic control of particular areas displaying high concentration of corrupt practices and drawing strong public interest.
- **Civil society organizations outside the capital city Sofia are increasingly active.** Public councils for preventing crime and counteracting corruption have been established at the regional and municipal levels. Various forms of public-private partnership to promote transparency and accountability of local government have been endorsed at the local level.
- **Civil society also promoted the incorporation of anticorruption education as an essential element of public education.** *Coalition 2000* initiated for the first time anticorruption education in secondary schools and universities across the country, as well as in various NGO training courses. Instruction and reference books for specialists as well as for a general audience were published.
- **The monitoring of the absorption of the EU preaccession funds is of increasing importance.** The programming and evaluation of the effectiveness of the management of EU preaccession funds in Bulgaria should be one of the priority areas for public-private partnership between the state and civil society in the future.

International experience shows that it is hardly possible to achieve sustainable results in a short period of time. Yet, the limitations of the political cycle require each government to accomplish visible results within its own term of office. Achieving a balance between these seemingly opposite tendencies calls for the concerted efforts of public institutions and civil society. One specific example in this respect is the decline of the hidden economy in Bulgaria in the past 2-3 years. Still, in a number of sensitive areas such as the judiciary, law-enforcement authorities, and large-scale privatization, there has not been any tangible progress despite the anticorruption reforms already under way. In other areas, such as healthcare and education, such reforms are yet to be launched.

1. CORRUPTION MONITORING SYSTEM OF COALITION 2000 – ITS ANTI-CORRUPTION ROLE AND MAIN RESULTS

The Corruption Monitoring System (CMS) is designed and implemented not only as a research instrument for monitoring and measuring the spread and dynamics of corruption in the country, but also as a significant element of the overall anti-corruption strategy and action plan of *Coalition 2000*. **In this sense, CMS is the first initiative of its kind in the post-communist countries, combining significant research possibilities and a powerful anti-corruption potential.** It started at a key period for the country – the intensification of the social and economic reforms after a period of considerable delay of the social transformations in the first half of the 1990s. In the period 1989 to 1997, a significant corruption potential and resources were accumulated in Bulgarian society. Due to the continuous political and economic stagnation they did not attract much public attention and were not a subject to research and analysis. The start of the political stabilization and the accelerated economic reforms after 1997 also caused the large-scale redistribution of the national wealth to be stepped up. As a result, corrupt practices turned into a key mechanism both for gaining competitive advantages in this process, as well as for the accumulation of capital and the transfer of resources from the state/public sector to the private sector. The spread of corruption started becoming visible and entered the political agenda of the country.

Corruption is understood as an abuse of power – economic, political and administrative - which leads to personal or group benefits at the expense of the rights and legal interests of the individual, the specific community or the whole of society.

Source: CLEAN FUTURE. Anti-Corruption Action Plan, *Coalition 2000*, 1998, Sofia, p.11

In this context the development and implementation of CMS faced serious challenges and required the use of innovative approaches and social technologies. They were related to the solution to a number of basic problems, guaranteeing its effective functioning:

First, corruption became widespread, reaching the highest levels of government and entering virtually all spheres of public life. This created the need for the establishment of a resolute anti-corruption coalition that included representatives of the political elite, public administration, civic organizations, and the academic community. To accomplish this task,

the principles of public-private partnership in the formation of *Coalition 2000* were promoted, developed and implemented. Without the input of all interested parties, the anti-corruption efforts would have been doomed to failure.

Second, the dominant perception among the public as well as among some politicians and academics was that the attempts to counteract corruption were largely pointless and unproductive. Strong skeptical attitudes also existed concerning the possibility of corruption being monitored and measured. In order to overcome the skepticism and distrust, it was necessary to develop and demonstrate the validity of the theoretical and methodological parameters of CMS. For this purpose the existing research in this field was utilized taking into account the experience of the World Bank, the US Agency for International Development (USAID), international non-governmental organization, such as Transparency International, etc. The argument that was advanced was that the use of a combination of different study methods and techniques for the monitoring and measuring of corruption, based on reliable theoretical and methodological prerequisites, repeated household surveys and the comparison of data from different sources (citizens, experts, managers and businessmen, employees in the public sector, etc.) allows reliable data of the spread and dynamics of corrupt practices to be obtained.

Third, the inherited alienation from the state, supported by the weakness and ineffectiveness of the new democratic institutions, led to a crisis of confidence in them and to increased tolerance to corruption. The confidence in the effectiveness of collective social actions and the possibility to influence the functioning of the public institutions through civic initiatives and control was also lost. CMS had to win the public's trust and to establish itself as a reliable, independent and competent source of objective information about the spread of corruption in the country. In order to attain this goal and using the principles of public-private partnership, an extended Expert Council was set up, including representatives of the academic community, of influential research organizations, and of the legislative, executive and judiciary branches. The Expert Council discussed and established the methodology and the tools of all aspects of CMS. This created additional guarantees for their reliability and the trustworthiness of the offered information.

The start of the anti-corruption initiative in Bulgaria was in 1997 with the establishment of *Coalition 2000* – a public-private partnership. The first data from CMS were published and the first public event of *Coalition 2000* was held in December 1998. The public and political reactions to the presented information on the spread of corruption in the country varied. They ranged from strong media interest and the support of part of civil society, through the silent attention and moderate skepticism of the authorities regarding the possibility of effectively countering corruption, to the complete distrust and negation of the practicality of such initiatives. Opinions were also expressed that the social and economic effectiveness of CMS would be very low. **In response to this, several**

basic functions of the monitoring system were defined, justified and implemented:

- The CMS includes regular presentation to the public of information about the scale and the trends in corruption, the factors underlining it, and the consequences. CMS performs the function of a reliable diagnostic and assessment tool about the spread of various types of corruption in different spheres of public life. The level of penetration of specific corrupt practices in different institutions, socio-professional groups, economic sectors, etc., is also identified. **For the first time, the spread of corruption is measured not through the study of the public's assessment, opinion and ideas, but through the collection of data about actual corrupt behavior and exerted corruption pressure.** With this approach, reliable information is obtained about the number and frequency of the corrupt transactions and the participation of employees, citizens or business representatives in them.
- A significant function of CMS is to reflect the corruption-related attitudes, assessments and expectations of the public and different economic, political, social and professional groups. Attitudes about the spread and perceived practical effectiveness of corruption are just as significant a factor for its reproduction as its "objective" dimensions.
- CMS helps to establish the problem areas and priorities in the implementation of reforms for the improvement of state governance and the introduction of anti-corruption policies and programs. Corruption monitoring is of great importance to the formulation of the strategy and tactics of carrying out such reforms and initiatives. It provides information that can be used to assess the effectiveness of the reforms and the implemented projects of governmental and non-governmental organizations. This provides feedback to the state institutions and civil society and helps introducing corrections in the content and ways of carrying out the reforms and the anti-corruption policies. More importantly, the corruption monitoring is already used as a reference point and criterion for the effectiveness of the anti-corruption efforts and initiatives of the Bulgarian government and civil society.
- Corruption monitoring provides data and analyses that stimulate the public debate on corruption. They increase the public's intolerance to it, as an element of democratic values, and bring about the introduction of mechanisms, ensuring transparency and confidence. One of the main achievements of the first stage of anti-corruption effort was that a public debate was initiated on the problems of corruption in Bulgarian society. It was an important prerequisite for the formation of public and political support for an active anti-corruption policy. The data obtained from CMS are also used as an instructive element of educational and informative anti-corruption campaigns and programs.

- The CMS of *Coalition 2000* was further developed into a methodology for regional monitoring of corruption in the countries of Southeast Europe. This regional monitoring is realized within the framework of the Southeast European Legal Development Initiative (SELDI), which started at the end of 1998. This initiative unites non-governmental organizations, representatives of government institutions in the region, and experts from different countries in Southeast Europe (Albania, Bosnia and Herzegovina, Bulgaria, Macedonia, Romania, Serbia and Montenegro, Croatia). CMS was also applied in other countries in transition (Georgia, Moldova, etc.). This proved the international value of CMS and the possibility of using it as a reliable instrument for international comparisons and assessments of the spread and dynamics of corruption in the post-communist countries¹.

The innovative approaches and socio-technological solutions for the design and implementation of CMS, as well as its track-record in fighting corruption, turn it into a unique and reliable instrument of the comprehensive strategy for counteracting and curbing corruption not only in Bulgaria but also in other societies in transition.

The present report presents some of the main results of the application of CMS. The presence of systematic data for the entire 1998-2004 period allows for outlining the trends in the level of corruption in the country, as well as of the public assessments and attitudes to it. The experience from the research of corruption and the results attained so far are a good basis for the preparation of a future strategy for counteracting and curbing corruption.

1.1. Level of Corruption – Sustainable Reduction and New Challenges

There are two basic aspects of the analysis of the level of corruption in the country – the level of the actual and the level of the potential corruption. Important for the reproduction of corrupt practices is not only the act of giving and taking (regardless of the subject of the corrupt deal – money, services, information, etc.) but also the proposal for a corrupt transaction (offer or demand). The accomplishment of corrupt transaction is denoted as actual corruption, while the initiation of corrupt transaction – a potential corruption. The level of potential corruption essentially reflects the level of corruption pressure, exerted by the persons offering or willing to make corrupt transactions. In this sense this is an indicator of the level of demand and supply of corrupt services.

The level of actual and potential corruption in the CMS of *Coalition 2000* is measured mainly through two interrelated corruption indexes:

- **Personal participation in corrupt interactions.** This index reflects the frequency of the cases, in which citizens admitted that they gave money, a gift or service for the purpose of having a problem solved.

¹ The public's trust and the proven reliability of CMS have turned it into a source of reliable information, used both by the Bulgarian media and state institutions, as well as by foreign analysts (e.g. The Financial Times of 5.10.2004. in the article "Bulgaria and Romania Receive Approval for EU Accession")

It reflects the level of actual corruption in the country for a certain period of time.

- **Corruption pressure.** This index reflects the frequency of the cases, in which citizens admitted that they have been asked for money, a gift or service for the purpose of having a problem solved. It reflects the level of potential corruption in the country.

These two corruption indexes reflect not public perceptions of corruption, but experiences with certain types of corrupt actions. The level of actual corruption is assessed also through three basic indicators:

- frequency of corrupt actions (giving or taking);
- number of actual corrupt transactions for a certain period of time;
- size of corrupt payments.

The corruption indexes refer above all to the so-called petty corruption, which is seen in the contacts of citizens with low-level public sector employees. Information about the large scale (institutional, political) corruption, as a rule, is not obtained from representative studies of the population and only to a limited degree – through economic studies.

Grand and petty corruption

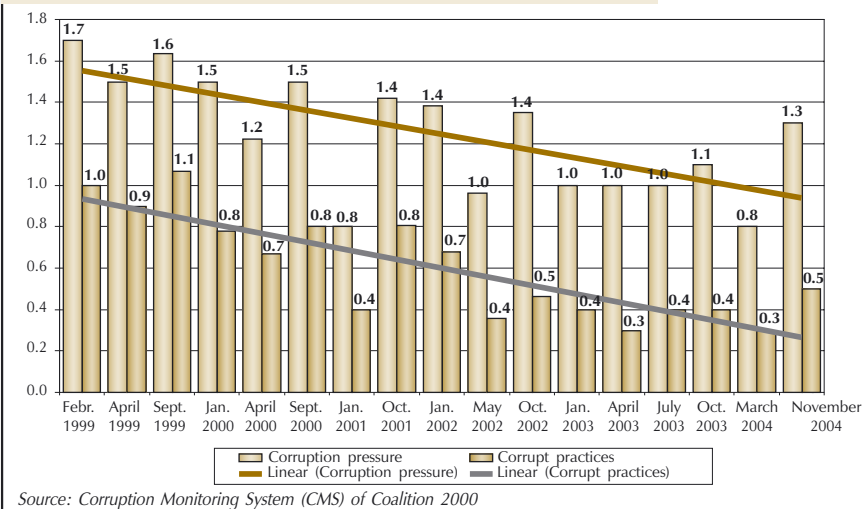
There are two main types of corruption that differ in their scale, targets, mechanisms, and consequences:

Grand corruption involves high-ranking state officials, politicians and businessmen, who make decisions on the distribution of significant resources. Very often grand corruption is identified with political corruption in the higher echelons of power. In this case state leaders, senior administrators and politicians use their positions in order to gain big advantages to serve their personal, party or corporate interests.

Petty corruption usually involves low-level employees who are in immediate contact with citizens and with representatives of small and medium-sized businesses. It entails bribes, favors and gifts on a smaller scale. It is more widespread in everyday life than grand corruption.

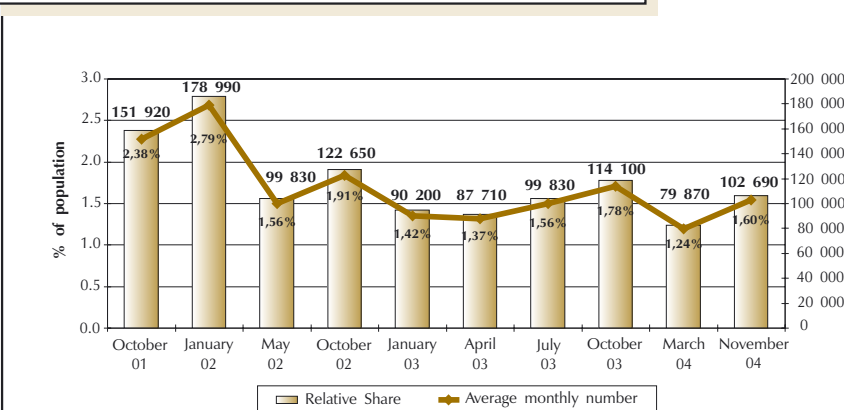
The main trend of the 1998 – 2004 period, is the gradual reduction in both actual and potential corruption (Chart 1).

CHART 1. DYNAMICS OF THE INDEXES OF THE LEVEL OF CORRUPTION
(FEBRUARY 1999 – NOVEMBER 2004)



both, in the cases of pressure exerted by a public sector employee, and in the actual corrupt deals, a return is seen to higher average values, typical of 2003. Despite the registered increase in November 2004 by about 20,000 cases, compared to March 2004, the level is nevertheless lower than for the same period of the previous year (In comparison, then the average monthly number was 114,000 cases, and at the present moment – around some 100,000 cases). Whether this negative trend is stable or a result of ad hoc factors remains to be seen in 2005.

CHART 2. AVERAGE MONTHLY NUMBER OF CORRUPTION TRANSACTIONS



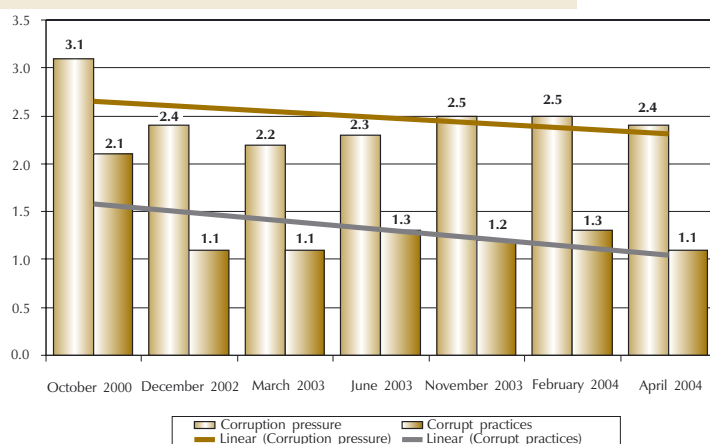
Nevertheless, the decreasing share of companies which have participated in some kind of corrupt deals should be noted.

The drop in the absolute number of actual corrupt transactions is also significant – around two times. If in 1998-1999 the average monthly number of participations in corrupt interactions, admitted by adult Bulgarian citizens, is between 180,000 and 200,000 per month, in the period July 2003 – March 2004 it varied around 80,000-90,000². In March 2004, one of the lowest values of corruption pressure was registered, exerted directly or indirectly on citizens by employees in the public sector. By the year-end, however,

As a whole, the levels of actual and potential corruption reported by businesses are twice higher than the ones reported by the general population (Chart 3). This fact illustrates the importance of the problem for Bulgarian business and is an indicator of the relatively widespread business corruption. After the registered decrease of corrupt actions and pressure in business in the period 2000-2002, in the last two years their levels have been retained.

² This assessment is based on data from the population census (March 2001), according to which the total number of the population aged over 18 is 6,417,869, and 1% of the sample corresponds to 64,180 people.

CHART 3. DYNAMICS OF THE INDEXES OF THE LEVEL OF CORRUPTION FOR THE BUSINESS SECTOR (OCTOBER 2000 – APRIL 2004)

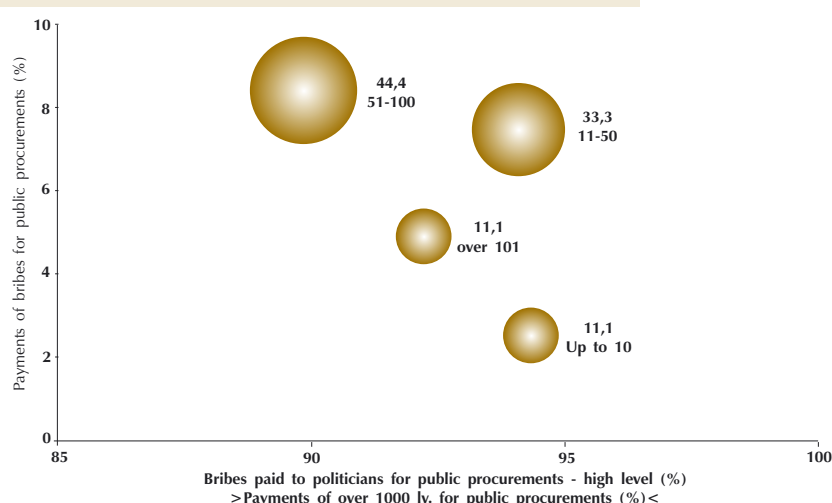


Source: Corruption Monitoring System (CMS) of Coalition 2000

Both in business and among the population, there is a clear trend towards the increase in the value of corrupt transactions. There is a noticeable shift towards larger bribes given in the form of money, services or gifts. Among the population, in a period of just six months, the number of corrupt transactions valued between 100 and 500 leva³ has doubled.

In business the unofficially given sums increased even more tangibly. For some of the most “expensive” public services bribes already exceed 5,000 leva. In every six, out of ten public procurements the unofficial sum for winning them was over 1,000 leva.

CHART 4 SIZE OF UNOFFICIALLY PAID SUMS FOR WINNING PUBLIC PROCUREMENTS DEPENDING ON THE SIZE OF THE COMPANY



Source: CMS of Coalition 2000; Study of Bulgarian business (April 2004)

According to business representatives the areas with the highest concentration of corrupt practices in the economy are: privatization, public procurement, issuance of business licenses and permits, and nepotism. Over three-quarters of business managers consider that corruption in these spheres is very widespread. According to some two-thirds of the business representatives, corruption is mostly connected to the funding of political parties and election campaigns, tax evasion, favorable settlement of court disputes, etc. In the last two years, however, a

positive trend is registered towards decreasing levels of the main corrupt practices (Table 1).

³ 1 euro = 1.95 Bulgarian leva

TABLE 1. SPREAD OF DIFFERENT FORMS OF CORRUPT BEHAVIOR IN BUSINESS (%)

Forms of corrupt behavior	December 2002		November 2003		April 2004	
	Low level	High level	Low level	High level	Low level	High level
The acceptance of bribes by employees and politicians for influencing the outcome of public procurement procedures	5.1	82.3	4.3	81.2	5.6	76.1
The acceptance of bribes by employees and politicians in holding privatization tenders	4.0	85.1	3.1	83.8	4.8	80.1
The acceptance of bribes by employees and politicians for the issuance of licenses or permits for the performance of business activities	8.1	81.3	7.8	79.6	14.8	74.3
The acceptance of bribes by employees and politicians for the purpose of evading or reducing taxes	18.5	67.7	17.6	65.6	22.2	61.3
Accepting money or gifts in the performance of official duties	15.7	73.8	14.7	73.0	17.1	68.8
Accepting money or gifts for a favorable settlement of criminal cases	5.1	82.3	8.6	60.4	9.2	60.4
The use of connections and protection for appointing relatives or friends of management employees	4.0	85.1	5.3	83.3	8.5	81.0
Funding political parties and election campaigns for the purpose of serving private interests	8.1	81.3	5.2	75.8	8.3	71.8

Source: CMS of Coalition 2000; Corruption studies of Bulgarian business (December 2002, November 2003, April 2004)

1.2. Corruption Pressure and Assessments of the Spread of Corruption among Professional Groups

Periodic fluctuations are observed in the level of potential corruption among the different socio-professional groups. The greatest fluctuations observed in the levels of corruption pressure by university lecturers, customs officers and policemen. At the end of 2004, though, the levels moved towards the average levels for the 1998 – 2004 period. A change, but towards a reduction in corruption pressure during 2004, was registered among the judges, investigators and prosecutors. Following a lively public discussion and the taking of anti-corruption measures, a decrease in the number of cases of exerted corruption pressure is noticed in the judicial system. In this sense, the momentary values of the exerted corruption pressure by different professional groups should be viewed carefully. They are rather a warning signal that a problem of corruption exists in a given group. At the end of 2004, for example, such a group of public sector employees are doctors who not only reverted to the high level of pressure exerted by them of 2002, but also came out at the head of the corruption rankings. The situation is similar among police officers who rank next with very close values of exerted corruption pressure (Table 2).

Despite the periodic changes, as a whole, customs officers, policemen, doctors, employees of the judicial system, and municipal employees are among the professional groups exerting the most frequent corruption

pressure on citizens. They can be defined as problematic professional groups, which emerge as the main bearers of petty corruption.

TABLE 2. CORRUPTION PRESSURE BY PROFESSIONAL GROUPS* (%)

	Sept. 2000	Jan. 2001	Oct. 2001	Jan. 2002	May 2002	Oct. 2002	Jan. 2003	May 2003	July 2003	Oct. 2003	March 2004	November 2004
Doctors	22.1	6.1	22.3	18.0	20.2	20.3	12.9	12.8	15.7	16.6	13.2	22.5
Police	24.0	18.9	18.5	19.9	15.2	22.3	12.0	14.1	17.8	13.9	13.1	22.2
Lawyers	-	-	-	-	-	26.5	10.5	17.4	13.1	13.8	12.9	16.5
Customs officers	15.8	22.7	18.4	18.5	25.5	19.4	17.3	16.6	16.4	15.3	22.3	13.8
University lecturers	-	-	-	-	-	11.9	14.7	11.8	21.5	16.6	12.7	12.6
Municipal employees	10.3	11.2	11.3	10.0	5.5	10.9	4.4	8.4	6.9	6.4	4.7	10.3
Administrative employees in the judicial system	11.5	13.3	11.3	9.4	11.0	15.9	8.5	4.9	7.7	9.0	1.8	9.4
University employees	-	-	-	-	-	5.6	11.9	3.4	10.9	9.0	8.1	9.0
Businessmen	9.7	11.6	13.4	10.8	9.4	9.6	7.0	9.1	13.6	8.3	10.5	8.3
Mayors and municipal councilors	3.2	2.1	1.4	2.0	2.7	5.3	3.0	4.1	3.4	3.3	3.1	6.6
Ministry employees	7.0	8.9	5.6	4.9	9.3	5.6	13.8	4.3	10.1	8.2	4.9	6.3
Teachers	5.5	3.7	6.1	3.6	3.1	7.4	4.4	3.4	3.4	5.6	3.9	6.2
Judges	9.1	5.8	6.8	7.8	10.7	16.6	2.0	14	6.9	8.5	10.7	5.8
Tax officers	8.3	6.4	9.1	5.3	3.8	4.2	4.1	3.1	3.7	5.9	3.8	5.1
Prosecutors	7.8	7.2	0.8	4.1	8.5	12.3	6.6	9.2	8.2	4.2	1.8	5.1
Politicians and leaders of political parties	-	-	-	-	-	7.1	5.0	7.1	6.3	4.1	4.5	5.0
Investigators	6.0	5.5	6.0	4.3	8.2	8.3	4.3	12.8	2.5	9.6	1.7	5.0
Representatives of non-profit organizations	-	-	-	-	-	5.0	-	4.0	2.6	1.4	-	1.3
Journalists	-	-	-	-	-	1.8	1.4	-	-	-	-	
MPs	6.4	4.2	2.1	2.1	3.5	2.0	11.2	8.9	-	-	-	
Ministers	-	-	-	-	-	6.3	-	3.3	3.4	4.8	-	
Bankers	2.9	4.1	4.1	4.1	5.6	3.9	5.1	9.9	1.2	4.2	8.3	

*Relative share of those, who have had contacts in the last year with the respective professional group, and from whom money, gifts or services have been asked

Source: Corruption Monitoring System (CMS) of Coalition 2000

The data of the exerted corruption pressure by the different professional groups are also supported by the general public perceptions of the spread of corruption. CMS data were also obtained about the relative share of citizens who consider that most or all representatives of the respective group are involved in corruption. **Customs officers, representatives of the judiciary, policemen, as well as politicians, MPs and government ministers, are perceived as professional groups among which corruption is most widespread.** The public perceptions of the spread of corruption among the different professional groups do not show significant changes in 2004. Society and businesses still do not register serious progress in the curbing of corruption among customs officers, politicians and MPs, representatives of the judiciary, policemen and other professional groups. The established perception of their corruption, in some cases, was even enhanced and the negative assessments of the spread of corruption among these groups increased at the end of 2004. In this sense, the future challenges before the anti-corruption efforts of the state and civil society will be related to the significant reduction of the actual spread of corruption in the country. This would lead to changing the deeply rooted public perceptions and attitudes of the corruption of certain professional groups and institutions.

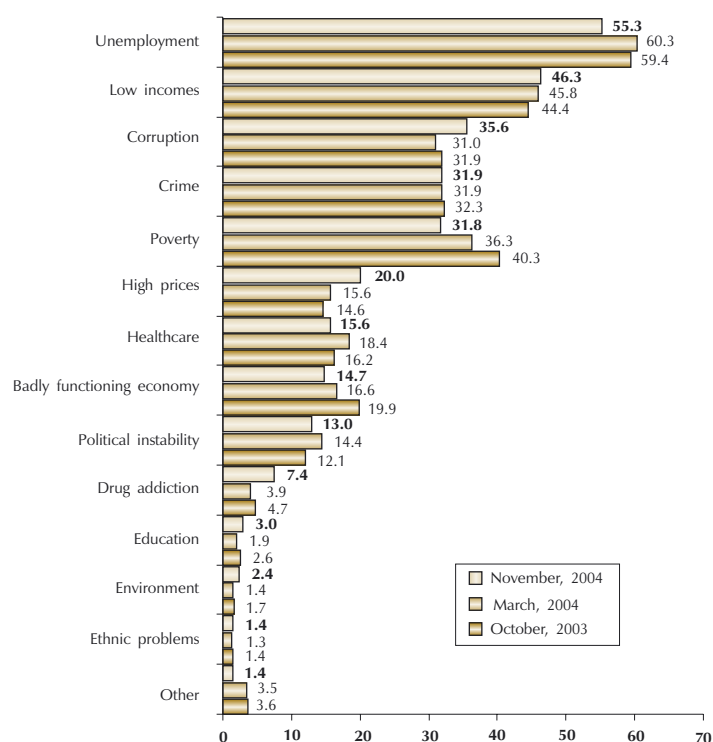
1.3. Public Attitudes to Corruption

Corrupt practices exist in a specific social environment and are significantly influenced by the state of public awareness: the degree of perception of corruption as a problem of Bulgarian society; the dominant social values and attitudes to corruption; the public perceptions of the effectiveness of corrupt practices and the success of anti-corruption actions. When citizens are convinced that they live in an environment, in which corruption not only goes unpunished but is also perceived as an effective means of solving private problems, their predisposition to the use of corrupt practices grows greatly.

Corruption is invariably perceived as one of the most acute problems of post-communist Bulgaria. Since 1998 it has ranked consistently among the five most important social problems, usually taking 4th-5th place together with crime. Unemployment, low incomes and poverty were usually ranked higher because they directly affect the living standard of a large part of the Bulgarian citizens. In 2004, as a result of the active social policy of the government, unemployment and poverty have become less of a public concern. The low incomes and crime, though, remain at the same level, while **corruption has become the third most important problem for the society.**

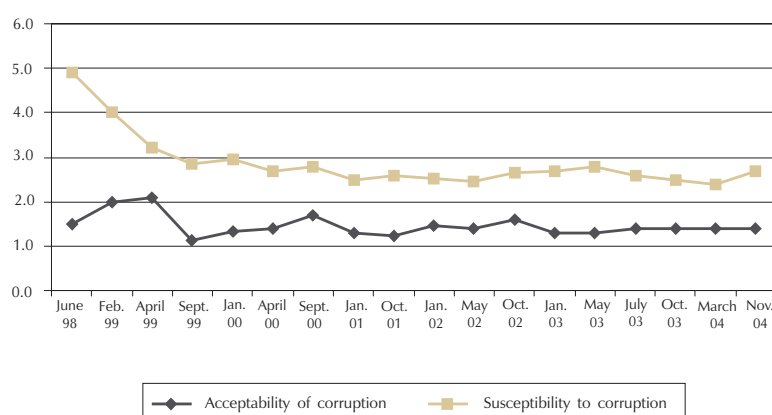
Public attitudes to corruption are dependent on the extent to which the predominant social values are accepting or rejecting corrupt practices as a way to solve problems. Such values are studied through the specially designed CMS **index of the general acceptability of corruption.** **The positive trend in the last 3-4 years of an ever increasing view of corrupt actions as unacceptable, both by society and by business circles, continues in 2004 as well.** Nevertheless, the warning signal of the latest study from 2004 should be taken into consideration, which shows a slight increase of the acceptability of corrupt practices. Such

CHART 5. CORRUPTION AND THE PROBLEMS OF SOCIETY IN 2004 (BASIC PROBLEMS FACING BULGARIA - %)



Source: Corruption Monitoring System (CMS) of Coalition 2000

CHART 6. PREREQUISITES FOR THE EXISTENCE OF CORRUPTION (MIN = 0, MAX = 10)



Source: Corruption Monitoring System (CMS) of Coalition 2000

results coincide with the above-quoted data on the increase of actual and potential corruption at the end of 2004.

Albeit at lower rates, the tendency of the Bulgarian citizens to use corrupt practices is also slowly decreasing, which is registered by the **index of susceptibility to corruption**. With the gradual narrowing of the spectrum of reasons, which are cited to justify corrupt actions, citizens begin to increasingly feel blackmailed and unjustly treated by the public administration. The number of people, willing to pay a bribe on any occasion, is getting ever smaller. Among some social strata people either refuse to pay bribes or search for alternative ways of solving problems with public servants. Individuals with higher education and higher incomes are more inclined to seek other ways of solving a problem, while those with lower education would simply refuse to pay the bribe demanded of them. In both cases this is indicative of the increasing **awareness of civil rights** and the ever **greater intolerance of citizens to the practice of paying additionally for public services to which they are rightfully entitled**.

Despite the slowly decreasing corruption pressure that public administration employees exert on businesses, and despite the increasing public disapproval of corrupt actions, the susceptibility of the Bulgarian businessmen

to participation in corrupt practices remains relatively stable. This is largely explained with the widespread attitude that informal payments are an effective means of solving private problems.

The dynamics observed in most corruption indicators also relate to the public perceptions about the society's potential to cope with corruption. After nearly a year-long favorable and optimistic assessments, at the end of 2004 an increase is registered in the public's doubts and skeptic attitudes that coincides with the increase of actual and potential corruption in Bulgarian society.

The data obtained from CMS about the level of the spread of corruption in the country outline several stable trends that may be summarized in the following conclusions:

- For the period 1998 – 2004 a **significant reduction has been achieved both of the corruption pressure** exerted by civil servants, as well as of the **actual corrupt transactions**. This decrease is felt more tangibly with regards to petty corruption, manifested in the interaction of citizens with public sector employees. At the same time, business-related corruption continues to be a serious problem, and the positive changes in the business sector take at a slower pace.
- The **level of corruption** in the different social spheres, measured through the **number of corruption transactions, is decreasing**. Despite this, the positive changes do not correspond to public expectations. A number of indicators show that corruption is changing its forms of manifestation but it is still too early to draw conclusions whether it is significantly reduced. Indicative in this respect is the increase in the number of transactions for some public services although absolute numbers are still low. This shows a concentration of corrupt practices in specific areas. Correspondingly, the size of bribes is also increasing, depending on the importance of the corrupt transaction. This also determines the higher levels of corrupt payments by businesses.
- An interesting development of recent years is the **gap between the changes in public perceptions of the spread of corruption and the corruption pressure** that is actually exerted by public employees. Perceptions about corruption among the different professional groups change only after a very tangible change in the actual corruption pressure, exerted by the respective group. On the other hand, it is possible that for a given period of time the public perceptions about the level of corruption among certain professional group could increase significantly, while no change in actual corruption pressure from this group is registered. This may be due to a number of factors such as the more frequent discussion of the subject in the media or the lack of a visible decrease in the behavior, which shape the expectations of corruption pressure from the respective group. Among some groups, for example doctors, mayors and municipal councilors, the increase in corruption pressure is gradually reflected also in the perceptions of businessmen about the spread of corruption in the respective group.
- Despite the slower rates at which people's attitudes have changed in comparison with the actual level of corruption, the positive

developments are noticed by the public. They reflect on its assessment of the potential of society to cope with corruption. Practical measures and the attainment of tangible results gradually restore people's confidence that corruption can be limited to a more acceptable level. The fluctuations in the intensity of anti-corruption actions and the increase in the level of corruption registered at the end of 2004, however, are a reason for doubts and distrust among the population. Business representatives are more reluctant to make positive assessments, and express a more skeptical attitude to the potential of the government and of society to curb corruption. The assessments of business and citizens of anti-corruption policies and their impact, as a whole, are moderately optimistic.

As a whole, after 1997 significant progress has been made with regard to identifying the problems and practices related to corruption in Bulgaria. As a result of the accumulated knowledge and experience, a number of administrative measures have been implemented with gradually increasing impact both on the size of actual corruption, as well as on the corruption pressure exerted by civil servants. The minor increase in the actual spread of corruption in 2004, however, is a serious signal that previous anti-corruption policies have exhausted their potential. Overcoming the structural and institutional deficits which permit the sustained reproduction of corrupt practices is the new challenge for the government and civil society.

2. BUILDING A NATIONAL ANTI-CORRUPTION INFRASTRUCTURE: STRATEGIES, INSTITUTIONS, LEGISLATION AND IMPLEMENTATION (1997-2004)

The national anti-corruption infrastructure in Bulgaria has emerged from the efforts of the civil society. A number of Bulgarian non-governmental organizations initiated the public debate on corruption and placed the fight against corruption in the focus of their activities. *Coalition 2000* has played a major part in this process ever since 1997. The initiative brought together for the first time NGOs, representatives of public agencies and the media in a joint effort to counter corruption. Despite the involvement of representatives of various public authorities in the *Coalition 2000* process and the stated commitment by some government agencies, the phenomenon of corruption has remained inadequately addressed at governmental level for a long time and not all the necessary measures to curb it have been undertaken.

The **Anti-Corruption Action Plan**, a key document of *Coalition 2000* approved at a widely representative Policy Forum in 1998, contained **the first comprehensive program to combat corruption** in Bulgaria structured under six major headings: developing a legal and institutional framework against corruption; reform of the judicial system; curbing corruption in the economy; enhancing civic control in the fight against corruption; changing the public perception of corruption and international cooperation. The annual Corruption Assessment Reports of *Coalition 2000* measure the dynamics of corruption in Bulgarian society (based on quarterly corruption indices), analyze the anti-corruption policy and propose specific measures in the key areas of the Action Plan. All of them have contributed to lowering the public tolerance to corruption, transferring the debate on corruption from the realm of civil society to the level of government policy and fostering a public-private partnership in the search for and identification of responses to corruption.

The comprehensive anti-corruption approach adopted by *Coalition 2000* on the basis of public-private partnership is applied in international development programs in countries where corruption has become a systemic problem. It reflects the understanding that systemic corruption is a complex political, social and economic problem that cannot be eliminated through sporadic private efforts or one-off emblematic anti-corruption projects that entail short-term results for political or reporting purposes. Systemic corruption generates staunch opposition to the reforms which can only be resisted through the collective effort of the civil society and international development organizations. Through its Corruption Monitoring System, *Coalition 2000* has set up a reliable tool to identify the spheres and sectors most affected by corruption and to exert perpetual social and political pressure in order to identify

internal vehicles of reform and trigger a dialogue and practical steps, e.g. in the customs administration, education, law enforcement, the local authorities, etc.

2.1. National Anti-Corruption Strategy and Implementation Program

The first comprehensive government anti-corruption document – the **National Anti-Corruption Strategy** – was only adopted in the fall of 2001. The strategy was drawn up with the active involvement of *Coalition 2000* and outlined the fundamental objectives of and line of action for anti-corruption reform within the public institutions, the judicial system and criminal law, the economic sphere, in particular the areas representing the most solid cross-section of public and private interests, as well as the anti-corruption cooperation between government, civil society and the media. It incorporated a number of basic principles and proposals from the Action Plan and the annual Corruption Assessment Reports of *Coalition 2000*.

The Program for the Implementation of the government strategy contained specific measures and pinpointed the institutions to translate them into practice. The ambitious task to have those measures in place by 2002-2003 was not fulfilled. In parallel with the optimistic assessments, the government reports on the execution of the program also highlighted some of the reasons for the lingering problems.

„... The organization to fulfill the Program tasks and initiatives has revealed some fundamental problems, i.e. the relatively insufficient administrative capacity of the specialized anti-corruption units, the fact that the anti-corruption system is not fully completed yet, the insufficient internal control of the program implementation, and above all the lack of enough earmarked financial resources ...”

Source: Report on the Program of Implementation for the National Anti-Corruption Strategy, as of 30 August 2003

The updated version of the program adopted at the end of 2003 reworded and supplemented some of the measures while extending the deadlines for their implementation up until 2005. The measures relate primarily to areas that are particularly prone to corruption risks, e.g. customs, privatization and post-privatization control, public procurement, the judicial system, public order and security agencies, public health and education. These largely coincide with the areas that the population and businesses alike identify as worst affected by corruption.

TABLE 3. SPREAD OF CORRUPTION AMONG INSTITUTIONS (POPULATION)

	October 2002	January 2003	May 2003	July 2003	October 2003	March 2004
Spread of corruption in general						
In Customs. Among customs officers.	30.4	53.3	50.0	54.1	49.5	46.3
In court. In the judicial system. In the system of justice. Among lawyers.	28.5	48.2	42.9	45.3	42.0	39.8
In the Ministry of Interior (including Traffic Police)	19.9	28.6	30.6	30.9	33.9	26.9
In the healthcare system. In medical care. In the National Health Service.	20.6	27.3	27.6	30.9	27.8	26.7
In the higher ranks of power (Parliament, the Presidency, and the Government). Among the political elite.	30.3	24.7* 23.1** 1.3***	27.6* 27.5** 2.5***	28.5* 28.2** 1.7***	26.1* 26.3** 1.9***	22.8* 24.0** 1.6***
Ministries and government agencies						
Customs Agency	10.9	31.2	31.2	31.5	32.4	28.4
Ministry of Justice	18.1	33.5	31.0	32.1	30.3	26.4
In all ministries and government agencies	-	19.6	21.8	24.6	25.4	23.7
Privatization Agency	22.5	27.2	24.7	21.8	21.7	19.2
Ministry of Healthcare	16.6	16.7	17.0	17.7	14.4	18.8
Ministry of Interior	15.3	18.4	19.0	18.5	21.2	16.9
Judicial system						
Throughout the judicial system	5.4	33.5	34.4	33.3	37.6	39.8
The courts, the administration of justice	32.1	27.5	29.1	32.5	30.5	24.9
Prosecution	32.0	26.2	25.3	30.0	22.9	19.1
Lawyers, notaries public	16.2	24.9**** 7.4*****	21.8**** 8.0*****	22.5**** 7.4*****	19.7**** 8.5*****	17.1**** 5.9*****
Investigation service	15.7	18.4	17.6	21.5	15.3	12.0

(Respondents could give up to five answers under "Spread of corruption in general" and up to three answers under "Ministries and state agencies" and "Judicial system", which is why the percentages do not sum up to 100)

* Spread of corruption in the government / among ministers / among deputy ministers;

** Spread of corruption in the National Assembly / among MPs;

*** Spread of corruption in the presidency / among officials at the presidency;

**** Spread of corruption among lawyers;

***** Spread of corruption among notaries public.

Source: Corruption monitoring system (CMS) of Coalition 2000

TABLE 4. SPREAD OF CORRUPTION AMONG INSTITUTIONS * (BUSINESS)

	March 2003	June 2003	November 2003	February 2004	April 2004
In customs, among customs officers	62.4	59.5	55.6	59.2	64.4
In the judicial system	36.7	36.4	32.1	34.8	38.3
Ministry of Interior and its agencies	20.4	24.9	27.8	23.1	25.1
In healthcare	18.3	17.9	16.6	18.9	22.0
In the agencies issuing various permits and certificates (Institute of Hygiene and Epidemiology, etc.)	22.1	20.6	16.2	18.0	18.8
In the National Assembly / among MPs	24.2	19.5	20.7	21.2	17.2
Government, ministers	20.1	19.2	18.5	18.9	16.5
In the tax system on	12.1	17.0	10.7	13.6	16.1
In municipal administrations	17.4	17.0	12.4	15.3	15.9
In central public administration	12.8	13.3	13.3	10.2	9.4
In big business	13.0	8.4	9.3	7.0	6.1
In the education system	2.5	1.4	3.3	3.2	2.5
In the presidency	0.9	0.7	0.2	-	0.4
Everywhere	6.3	8.6	14.3	14.2	10.3
<i>Other</i>	0.4	0.2	1.9	-	0.6

* The percentages add up to more than 100 because respondents could give up to three answers.

Source: Corruption monitoring system (CMS) of Coalition 2000

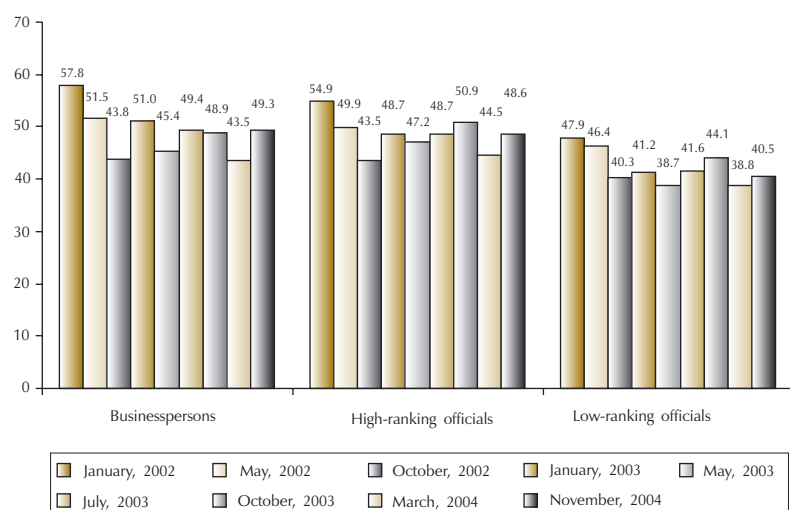
Although the strategic anti-corruption objectives of the program remain largely unattained, the action undertaken, especially on the initiative of or with the support of the NGO sector, made it possible to bring down the level of corruption, while rising to a certain extent the public confidence in the anti-corruption efforts of the government over the past two years.

The implementation of a number of tailored measures, such as the adoption of Codes of Ethics and rules for service delivery to citizens, the detection and punishment of corrupted officials gradually change the views that corruption is a tolerable and unpunished way to "facilitate" speedier public services of higher quality. That change of perception is hard to achieve and necessitates constant efforts on the part of those in power in order to improve the public service sphere.

The senior levels of public administration are still believed to be most susceptible to corruption, though even there, similarly to the business sector and the lower level of the administration, the perception that "the government is doing nothing" to restrict corrupt acts is now far weaker than before.

The evaluation by business people of the anti-corruption efforts of those in power is more favorable, especially when it comes to evaluating public sector officials. In the view of the business sector, the most noticeable change can be identified among lower-ranking

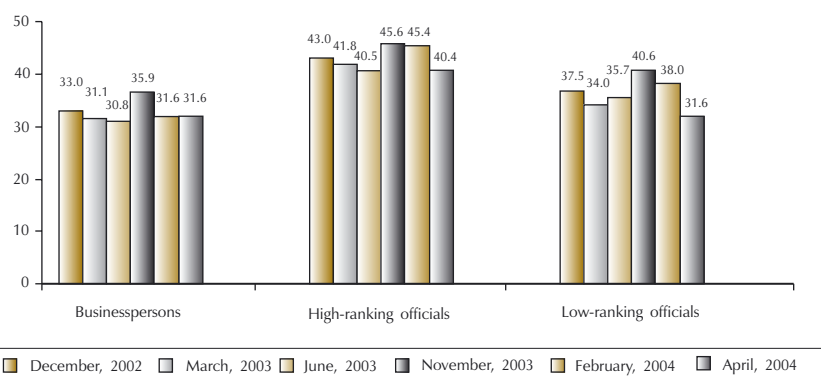
CHART 7. ASSESSMENTS OF THE IMPACT OF GOVERNMENT EFFORTS TO CURB CORRUPTION (%) (POPULATION)



Source: Corruption monitoring system (CMS) of Coalition 2000

officials who usually form the administrative structure most frequently contacted by companies.

CHART 8. ASSESSMENTS OF THE IMPACT OF GOVERNMENT EFFORTS TO CURB CORRUPTION * (%) (BUSINESS)



* Relative share of those who answered, "The government is not doing anything"
Source: Corruption monitoring system (CMS) of Coalition 2000

The experience of developed countries in combating corruption has clearly shown that it is not possible to arrive at sustainable results within short periods of time. On the other hand, the limited duration of the **political cycle forces every government to achieve visible results within the frame of its 4 years term of office**. Striking the right balance between those contradictory trends is difficult, though not impossible. The **concerted efforts to reduce the level of the hidden economy** in the past two to three years are one example in that respect. Limited as it may be, that success should be highlighted,

while not forgetting the lack of any tangible progress in other very sensitive anti-corruption areas, such as the judicial system, the privatization of large-scale enterprises, and conflict of interests. The strong and inevitable politicization of most anti-corruption efforts implies that the government would not withdraw from the anti-corruption debate but instead would plan carefully and identify more feasible objectives.

2.2. Government Institutions in the Fight against Corruption

2.2.1. The Legislature

The anti-corruption agenda in Bulgaria still includes an acute problem, namely the **need for a serious commitment of the National Assembly to the fight against corruption** through the exercise of key powers vested in the Assembly (law-making, parliamentary scrutiny of the government, and election of some state institutions) and setting up specific mechanisms. The 38th National Assembly (1997-2001) only made some steps along these lines at the end of its term. These affected primarily criminal legislation, the reform of public administration and the financial disclosures by individuals in senior positions within the government. The Standing Parliamentary Committee for Counteracting Crime and Corruption has not managed to become a focal point and initiator of effective and lasting anti-corruption efforts.

- The 39th National Assembly set up a **Standing Anti-Corruption Committee** (decision dated 11 September 2002) with the key task to discuss bills and issue reports, opinions and proposals thereon if it determines that the draft rules are conducive to the manifestation and spread of corruption. In addition, the Committee is empowered to collect information on the effectiveness of the existing legislation

and, depending on its findings, prepare reasoned opinions with suggestions to amend or supplement the rules in force or improve the statutes from the point of view of legal technique.

The Committee made efforts to establish cooperation with NGOs and various anti-corruption initiatives but fell short of realizing its stated intention to analyze corrupt practices and the legal or factual grounds from which they emerge, and initiate the legislative measures required in response. Despite the large number of complaints sent by individual citizens, members of parliament, government agencies and civic organizations (totaling 504 as of the setting up of the Committee up until mid-2004), the most frequent instances of corruption and their underlying reasons have not been summarized. During that period, the Committee discussed and provided opinion on only nine bills.

The inconsistent implementation of the principles of publicity and transparency in the operation of the National Assembly affects adversely the quality of the legislation passed and the membership of the institutions elected by the Assembly, thus undermining the authority of parliament and the public confidence in what the MPs are doing. The refusal of the National Assembly to endorse the measures proposed by the Ministry of Finance, namely to close down the duty-free shops along the land borders, leaves the impression that this has served the interests of particular business groups associated in the public mind with smuggling and corruption.

- **The law-making process** is not sufficiently transparent although occasional public hearings of bills have been organized. It is still common practice to introduce alternative bills the texts of which are then combined in a purely perfunctory manner. The result is that laws are enacted which are devoid of any straightforward philosophy. Private and corporate interests still pervade the legislative process primarily through the bills presented by individual MPs (or groups of MPs). Bills presented by MPs, unlike the government bills, do not need to be coordinated with any ministry or agency. The frequent exercise of the right to legislative initiative by MPs from the ruling majority deprives the political governance of a serious and well-thought commitment to the bills presented by MPs and to their enforcement upon enactment.

By the end of November 2004, a total of 1,020 bills were presented to parliament since the beginning of its term, of which 558 were presented by the government. Individual MPs or groups of MPs presented 462 bills, and MPs from the parliamentary group of the ruling National Movement Simeon II featured among the presenters of 234 out of them.

Source: National Assembly

- When **electing members of the institutions** formed by parliament (e.g. the parliamentary quotas of the Constitutional Court, the Supreme Judicial Council, the Commission for Protection against Discrimination, the National Audit Office, the Commission for Personal Data Protection, the Ombudsman, etc.) the vote of the MPs is more often than not dominated by backstage bargaining fuelled by political and economic interests. This frequently delays or even prevents the formation of those institutions and generates possibilities to improperly and informally influence their operation at a later stage.
- No **ethical rules** have been adopted to set forth the general principles for the conduct of MPs (priority of the public interest, transparent activities, respect for the citizenry, impartiality, etc.) or rules on disclosing information and **avoiding conflicts of interests**. There is no Standing Parliamentary Ethics Committee that should register any declared conflict of interests and inquire into complaints by citizens and civic organizations for violations and offences by MPs or suggest the imposition of sanctions.
- **The parliamentary scrutiny** designed to identify the existence of corruption in the executive branch and the necessary anti-corruption measures are more or less sporadic and barely efficient.
 - The existing data on questions asked by the MPs and the current inquiries into allegations of corruption show that during the term of the current National Assembly (by the end of 2004) a total of 10 corruption-related questions were asked, as follows: one question about the corruption scandal that occurred in the management of the Customs Agency and with the customs officers sacked at the Regional Customs Directorate in Rousse (November 2001); two questions on the Anti-Corruption Coordination Commission (October 2002); two questions on the existence of *prima facie* evidence of corruption in the public healthcare system (April and May 2002); three questions on the work carried on by the Parliamentary Anti-Corruption Committee as regards the executive and public administration (April and May 2003); two questions on corruption in the Bulgarian education system (October and November 2004). Throughout that period, only six MPs asked questions on public procurement.
 - The interim fact-finding committees set up during the term of the 39th National Assembly to explore the existing suspicions of corruption and abuse by government officials were used primarily for political attacks and failed to hit their target (a good example is the committee set up to check how the Ministry of Regional Development and Public Works absorbs the funding granted under the PHARE and ISPA instruments of the European Union). Even when such committees find out violations or irregularities, there is no information about any follow up on the files sent to the prosecution office (for example, the report on the 2002 inquiry into the operation of the state-owned enterprise Air Traffic Control based on allegations for stripping the company

assets). The parliament fails to respond to apparent conflicts of interest displayed in the day-to-day work of the executive and the legislature thus enhancing the public perception that corruption thrives even at the highest level of government.

2.2.2. The Executive Branch

The enforcement of the legislative framework of public administration reform that started at the end of the term of the previous government was taken over by the current government which initiated legislative changes, and organizational and institutional measures to fight against corruption. In the course of public administration reform, a **number of steps** were made **to ensure accountability and good governance**. In practice, however, every administration in the country tends to apply the legislation differently which produces diverging results as regards transparency and openness.

The **Reports on the State of the Administration** prepared annually since 2001, the setting up by most administrations of their own websites, and the creation and maintenance of an electronic Register of Administrative Structures and the Acts of Administrative Bodies are all steps serving to promote the principles of openness, transparency and accountability in the operation of the administration.

- The public **Register of Administrative Structures and the Acts of Administrative Bodies** contains information on the number of administrations in Bulgaria, their structure, the functions they perform and the number of their officials and employees. The content of the data available in the Register, however, shows that not all of them are introduced and regularly updated. For example, in terms of regulatory regimes, the blank forms and the sample documents required to issue licenses, permits and other regulatory acts are not available on the Register.
- Since 1998 each administration has to report on its annual activities to the government but this is done rather formalistically and not by all administrative structures, especially at the central level. Those reports are not yet able to serve transparency or the civic control of governance, as they do not determine in actual terms the efficiency of Bulgarian administration. The reporting process is subject to quantitative, rather than qualitative criteria and what is reported on are activities instead of results. The administrations do not declare in advance the goals they would pursue, the methods they would use to achieve them, the deadlines and the resources, so that Bulgarian taxpayers could have a realistic idea about the importance of the objectives planned or the resources needed for their pursuit.
- There are already inspectorates at all ministries and state agencies. The legislative framework, however, does not provide in detail for their powers, and they are understaffed. The inspectorates need to be supplied with broader authority to control the work of the

administration by, inter alia, examining complaints and information submitted by citizens and intervening whenever a conflict of interests or corruption occurs; they should also have disciplinary authority.

Complaints of corruption

„Of all complaints of corruption received by the administrative structures (503), each of the following units has received more than 5 complaints: local healthcare centers – 146; Customs Agency – 134; Ministry of Interior – 49; General Tax Directorate – 30; Ministry of Regional Development and Public Works – 22; General Directorate of Execution of Penalties – 21; Sofia Municipality – 14; Ministry of Agriculture and Forests – 10; district administrations: Vidin – 7; Lovech – 6; and Gabrovo – 5, the municipal administration in Kazanlak – 5, Ministry of Defense – 5. Compared to 2002 (when 630 such complaints were received), the overall number of complaints of corruption has decreased by 20.2 per cent.”

Source: Report on the State of the Administration, 2003

- A specialized central government structure was also put in place – the **Anti-Corruption Coordination Commission** (Decision No. 77 of the Council of Ministers of 11 February 2002) chaired by the Minister of Justice. The Commission undertook a series of steps to coordinate the implementation of the *National Anti-Corruption Strategy* and entered into agreements with other relevant government agencies. However, it failed to fulfill its major tasks – to collect, analyze and summarize information on anti-corruption measures and supervise the efforts to combat corruption. Its reports abound in findings rather than future-oriented analysis of existing problems. The Commission works mostly on general awareness-raising initiatives primarily designed for the public at large. Irrespective of the significant number of complaints (171 for the first 9 months of 2004 only) the Commission has not made public any common findings derived from those complaints or any suggestions as to how to combat corruption, especially at the high levels of government. The Commission has intensified its efforts in the area of anti-corruption education, jointly with anti-corruption NGOs and initiatives. Among these, *Coalition 2000* is a key partner, as acknowledged by the Commission.

The steps undertaken by the government should essentially curb administrative corruption and do not feature any specific measures to tackle political corruption which also affects the executive branch.

“... the approach taken by the Bulgarian authorities in the fight against corruption has left aside the need to take specific measures in the fight against high level corruption, in the political, local and business circles.”

Source: 2004 Regular Report on Bulgaria's Progress towards Accession, European Commission

As political corruption has penetrated all the three branches of power, uncovering and proving such corruption is even more difficult and requires the employment of special means. But, as suggested by the experience of other countries, even the implementation of specific measures is not always crowned with success. A variety of factors could explain the lack of political will for adequate measures - the difficulty in designing and delivering effective policies, concern that anti-corruption measures could damage the country's international image, and, of course, personal corruption of politicians.

2.2.3. The Role of the Judiciary

The implementation of the state criminal policy, including as regards corruption, depends to an utmost extent on the efficiency of the courts, the public prosecution and the investigation, on the bodies outside the judiciary that are directly relevant to its operations, and on the successful intertwining among all these institutions.

Criminal statistics on corruption offences for the period 1999-2004 suggest that **the number of cases for bribery and other corruption-related offences is very low**. Compared to the findings of the surveys of the actual level of corruption transactions, this merely proves the unsatisfactory performance of the bodies of the judiciary and their inadequate interaction with the executive branch in the investigation and prosecution of corrupt offences.

TABLE 5. CASES WHICH ENDED IN CONVICTION AND OFFENDERS WITH SENTENCES THAT HAVE COME INTO EFFECT FOR BRIBERY AND ABUSE OF OFFICIAL CAPACITY (1999 – 2003)

Year	Abuse of official capacity		Bribery	
	Cases ended in conviction	Offenders with sentences that have come into effect	Cases ended in conviction	Offenders with sentences that have come into effect
1999	30	31	-	-
2000	51	50	45	38
2001	57	46	29	26
2002	38	37	20	20
2003	44	44	31	31

Source: National Statistical Institute

The number of criminal cases for corruption offences is also low when compared to the total number of criminal cases finalized by the courts. The data of the National Statistical Institute for 2003 suggest that the cases of abuse of official capacity that entailed conviction were only 1.18% of the total number, while bribery cases amounted to even less – 0.13% of the total number of finalized criminal cases. The individuals sentenced for abuse of official capacity during that

TABLE 6. OFFENDERS WITH SENTENCES THAT HAVE COME INTO EFFECT FOR BRIBERY AND ABUSE OF OFFICIAL CAPACITY (1999 – 2003)

Year	Abuse of official capacity	Bribery
	Offenders with sentences that have come into effect	Offenders with sentences that have come into effect
1999	10	20
2000	32	25
2001	36	22
2002	37	20
2003	45	31

Source: Supreme Prosecution Office of Cassation

period were only 0.15% of all sentenced persons, and those sentenced for bribery were no more than 0.11% of all sentenced persons.

The total number of corruption-related cases ended with conviction appears even less significant when compared with the spread of corruption measured through the Corruption Monitoring System of *Coalition 2000*. According to the latter, the average monthly number of

corruption transactions in 2003 was 100,000, while the number of defendants sentenced for bribery and abuse of official capacity for the same year was only 75. For the first half of 2004 this proportion is about 80-90,000 to 71.

TABLE 7. INSTITUTED PRELIMINARY PROCEEDINGS FOR ABUSE OF OFFICIAL CAPACITY, BRIBERY AND GENERAL ECONOMIC CRIME (2002 – 2004)

Year	Year Instituted preliminary proceedings		
	Abuse of official capacity	Bribery	General economic crime
2002	724	50	281
2003	614	62	433
First half of 2004	205	61	252

Source: National Investigation Service

The insignificant number of cases which ended in conviction, however, contrasts with the number of instituted preliminary proceedings for such crimes. Overall, the number of pre-trial proceedings instituted over the past years to investigate alleged corruption-related offences, other than the cases of bribery, has been relatively high.

At the same time, many of those preliminary proceedings never reach the court and end already at the pre-trial stage. Thus, in the first half of 2004 only 15.8% of finalized preliminary proceedings for abuse of official capacity ended with an opinion by the investigator to bring the case to trial. The proportion only differs in respect of bribery but, interestingly, the overall number of preliminary proceedings for bribery is very limited in absolute terms.

TABLE 8. CLOSED PRELIMINARY PROCEEDINGS FOR ABUSE OF OFFICIAL CAPACITY, BRIBERY AND GENERAL ECONOMIC CRIME (2002 – 2004)

Year	Closed preliminary proceedings											
	Abuse of official capacity				Bribery				General economic crime			
	Total	For bringing to court	For discontinuing proceedings	For suspending proceedings	Total	For bringing to court	For discontinuing proceedings	For suspending proceedings	Total	For bringing to court	For discontinuing proceedings	For suspending proceedings
2002	1088	233	693	162	69	41	18	10	547	131	326	90
2003	988	221	607	160	69	38	20	11	471	148	256	67
First half of 2004	501	79	344	78	68	36	22	10	304	122	138	44

Source: National Investigation Service

While the penalties for corruption offences under the Criminal Code are substantial (including imprisonment of up to 30 years, fines of up to 30,000 leva and confiscation of offender's assets), in the few instances where such offences nonetheless entailed conviction the sentences defined by the courts were very lenient. This comes to show that, in practical terms, the state implements its criminal policy effectively only as regards petty corruption offences, while **serious crimes that affect the public interest far more heavily merely go unpunished**. Thus, from the beginning of 2002 to mid-2004, the courts imposed prison sentences for more than three years in only 7 cases, and in only one of those cases the sentence was longer than 10 years. These data and *Coalition 2000* surveys suggest that the deterrence impact the judiciary has on potential participants in corruption relates only to bribes of 5 leva or less, i.e. if the benefit from corruption exceeds that threshold, corruption crimes "pay".

TABLE 9. DURATION OF IMPRISONMENT IMPOSED FOR BRIBERY (2002 – 2004)

Year	Imprisonment imposed for bribery		
	Up to 3 years	From 3 up to 10 years	More than 10 years
2002	42	2	1
2003	29	4	-
First half of 2004	43	-	-

Source: Ministry of Justice

A major reason for the low detection rate and poor prosecution of corruption offences is the specific nature of this category of criminal conduct which benefits to all those involved in a corruption transaction. Thus there is little incentive for whistle-blowers as coming forward might entail their own criminal liability.

The poor efficiency of judicial bodies in investigating and penalizing corruption is rooted in other reasons as well, such as the frequent amendments to procedural legislation whereby powers and roles are shifted between authorities, the insufficient coordination between the separate branches of the judiciary and the other pre-trial authorities, internal corruption, links with organized crime, etc. On occasion, these institutions resort to mutual accusations and blame each other for failures of justice.

That the various pre-trial institutions do not cooperate effectively is evidenced by the **lack of consistent statistical data** for the opening and progress of criminal cases, including cases of corruption. The different authorities maintain different sets of statistical data grouped under different headings, thus preventing the comparative analysis of any data obtained. To rectify that problem – since it also prevents effective civic control – experts of *Coalition 2000* developed a system of indicators for the collection of statistical data for the work of judicial bodies and of the Ministry of Interior in detecting and prosecuting corruption. The final form of the suggested indicators, aligned with the recommendations of the institutions concerned, was provided to the Anti-Corruption Coordination Commission but was not put into operation.

Proposal for Indicators for the collection of statistical data on the work of judicial bodies and of the Ministry of Interior in detecting and prosecuting corruption offences
(Articles 282 – 283a, 224, 225b, 225c u 301 – 307a of the Criminal Code)

I. Ministry of Interior

Total number of initiated preliminary inquiries, including:

- Number of preliminary inquiries in which preliminary proceedings were instituted;
- Number of preliminary inquiries in which no preliminary proceedings were instituted

II. Investigation

Total number of preliminary proceedings handled by investigators, including:

- Number of preliminary proceedings where detention on remand was ordered;
- Number of preliminary proceedings where a detention request was refused;
- Number of preliminary proceedings where investigator issued warrant to bring charges against defendant;
- Number of preliminary proceedings closed with warrant of indictment;
- Number of preliminary proceedings closed with opinion to suspend criminal procedure;
- Number of preliminary proceedings closed with opinion to discontinue criminal procedure.

III. Public Prosecution

Total number of preliminary proceedings instituted by public prosecutors

Total number of closed preliminary proceedings submitted to public prosecutors, including:

- Number of indictments presented to court and number of defendants;
- Number of cases remitted by prosecutor for further investigation;
- Number of criminal proceedings discontinued by prosecutor;
- Number of criminal proceedings suspended by prosecutor;
- Number of criminal proceedings closed by plea bargaining approved by court (where applicable);
- Number of pending (instituted but not finalized) criminal proceedings.

IV. Court

Total number of indictments presented by prosecutor;

Total number of trials with pronouncement by judge-rapporteur, including:

- Number of trials discontinued by judge-rapporteur;
- Number of trials discontinued by judge-rapporteur while remitting case to prosecutor for further investigation;
- Number of criminal proceedings discontinued by judge-rapporteur;
- Number of criminal proceedings suspended by judge-rapporteur.

1. Total number of trials at first instance, including:

- Number of trials discontinued while forwarding case to relevant prosecutor;
- Number of criminal proceedings discontinued by court of first instance;
- Number of criminal proceedings suspended by court of first instance;
- Number of convictions;
- Number of acquittals;
- Number of cases ended by plea bargaining (where applicable).

2. Total number of convictions or acquittals appealed against by defendant or prosecutor before interim appellate court (optionally – who appealed against the conviction/acquittal) including:

- Number of appeals by defendants and prosecutorial appeals returned by court of first instance/interim appellate court;
- Number of appeals by defendants or prosecutors withdrawn;
- Number of convictions/acquittals reversed while remitting case to prosecutor for re-examination;
- Number of convictions/acquittals reversed while remitting case to court of first instance for retrial;

- Number of convictions/acquittals reversed while passing new sentence;
- Number of first-instance convictions/acquittals modified;
- Number of convictions/acquittals reversed while discontinuing criminal proceeding;
- Number of criminal proceedings suspended;
- Number of first-instance convictions/acquittals upheld.

3. Total number of convictions/acquittals appealed against by defendants or prosecutors before instance of cassation, including:

- Number of appeals by defendants or prosecutor sent back by interim appellate court/court of cassation;
- Number of appeals by defendants and prosecutorial appeals withdrawn;
- Number of convictions/acquittals upheld;
- Number of convictions/acquittals reversed while discontinuing criminal proceeding;
- Number of convictions/acquittals reversed while suspending criminal proceeding;
- Number of convictions/acquittals modified;
- Number of convictions/acquittals reversed in whole or in part while remitting case for retrial.

4. Number of reopened criminal cases

- Number of convictions/acquittals reversed upon reopening while remitting case for retrial;
- Number of convictions/acquittals reversed upon reopening while discontinuing criminal proceeding;
- Number of convictions/acquittals reversed upon reopening while suspending criminal proceeding.

V. Execution of Sentences

- Number of sentences effectively served and number of individuals having served or serving sentence

Coalition 2000

January 2003

The lack of uniform statistics forms part of a broader problem, namely the **lack of working mechanisms for the exchange of information** between the different branches of the judiciary and between them and other authorities involved in the fight against crime and corruption. The Unified Information System against Crime envisioned in the Law on the Judiciary has not been set up yet. The practical implementation of the system is being postponed, and this is an additional impediment to the fight against corruption.

2.3. Specialized Oversight Mechanisms

Improving the existing and introducing new mechanisms for independent control are essential components of a national anti-corruption infrastructure.

- **The National Audit Office** is in charge of controlling the management and use of public funds and implementing financial disclosure – a significant, albeit only moral, deterrent to corruption at the higher levels of power. The 2004 amendments to the *Law on Property Disclosure by Persons Occupying Senior Positions in the State* made it possible to impose fines on those individuals, covered by the law, who fail to file their statements of disclosure on time. On the other hand, the law does not provide sufficient guarantees against conflicts of interests and corrupt practices by persons occupying senior positions in the three branches of power. The efficiency of the National Audit Office is undermined by its lack of powers to cross-check the information contained in the statements; to control banks and commercial companies which could be used to drain public funds; and to use properly the results of auditing (the findings of the audit reports and the audit materials could not be used as evidence before the competent authorities).
- The introduction of the national **Ombudsman and the local public mediators** had been proposed in the *Coalition 2000* Anti-Corruption Action Plan as these are additional and easily accessible mechanisms to monitor the operation of the administration. The efforts made by *Coalition 2000* in this area helped formulate and enact the legal framework of these institutions. While the practical implementation of that mechanism at the local level advanced considerably in 2004 (mainly due to the efforts of civil organizations and local authorities) and public mediators were elected in seven municipalities, the National Assembly failed twice in electing a national Ombudsman.

In a number of countries, the institution of the ombudsman has proven its potential and role as an out-of-court tool to combat corruption and prevent the breach of fundamental rights, while substantially **alleviating the workload of the courts** (particularly as regards administrative cases). In order for such an institution to perform better, especially in terms of its powers and independent status, it should be an institution **provided for in the Constitution**.⁴ Thus, the Ombudsman would be elected by a qualified majority, endowed with a legislative initiative in the area of human rights and entitled to refer cases to the Constitutional Court, which would not be possible if it is provided for in a regular law.

The problems with the investigation and prosecution of political corruption have also motivated other proposals to introduce **new oversight mechanisms**. The following deserve a mention here:

- The idea (launched in January 2003) of Mr. Georgi Parvanov, President of Bulgaria, to set up a specialized independent anti-

⁴ The Constitutional Court has expressly specified that such a body may be set up even if the Constitution is amended by the regular, rather than a Grand National Assembly.

corruption agency with functions similar to those currently exercised by the National Service for Combating Organized Crime in respect of corruption offences committed by certain responsible public officials and magistrates. In the course of the discussions, however, that idea did not meet with sufficient support and was therefore not developed into a bill despite the positive opinions expressed for it.

- The proposal of *Coalition 2000* to introduce the position of a public official empowered by law to perform prosecutorial functions, or a team of such public officials, outside the hierarchical system of public prosecution in its current form. That proposal was submitted to the Interim Commission for Amendments to the Constitution but was not taken on board when the Constitutional amendments were discussed. Later, it was reasoned in greater detail and submitted to the government Anti-Corruption Coordination Commission. The idea is for those officials to be elected by the National Assembly for particular functions (e.g. instituting preliminary proceedings, investigating, bringing and maintaining charges of crimes committed by high-level politicians and magistrates, in cases of internal corruption in the judiciary, etc.) or for specific cases; those officials should enjoy the same immunity as magistrates.

2.4. Legislative Measures to Combat Corruption

The legislative changes proposed in the *Coalition 2000* Anti-Corruption Action Plan derive from the general understanding that comprehensive measures are required to ensure an environment which prevents corruption. These are based on a systemic approach that mandates reforms in the areas of criminal, civil and administrative law and procedure alike. The contribution of the civil society is not only to outline the overall parameters of reform and suggest specific legislative solutions, but also consistently pursue their enforcement. **The legislation that forms a legal environment to resist and prevent corruption has been improved, largely due to the international commitments undertaken by Bulgaria in the context of its accession to NATO and the European Union and to the pressure exerted by civic anti-corruption initiatives.** Regardless of the progress made, however, the pace and the quality of reforms (in particular the lack of an overall philosophy and systemic approach) and their implementation are still problematic. The 39th National Assembly did not abandon the practice of enacting important pieces of legislation only towards the end of the parliament's term.

2.4.1. Criminal Law Instruments

In the period reviewed by this report the country made significant progress in developing a modern criminal law frame for corruption-related offences. At the same time, the **enforcement of the rules is greatly inhibited** by the inconsistent and inadequate reforms of criminal procedure and, occasionally, by the poor interaction between different authorities and the existence of corruption there.

In terms of **substantive criminal law**, the major international and European instruments for the criminal prosecution of corruption were adopted. By a series of amendments to the Criminal Code the legal rules on the main corruption offences were improved substantially, and most of the changes conformed to the proposals made by *Coalition 2000* in its Anti-Corruption Action Plan and annual Corruption Assessment Reports. Thus, more bribery offences were incriminated (such as the offering or promising of bribe and the acceptance of such an offer or promise), as were the trade in influence and private sector bribery. Heavier penalties were introduced for active or passive bribery involving judges, prosecutors, investigators and jurors. For the first time now it is a criminal offence if an attorney gives or accepts a bribe in order to induce a case to be decided in favor of an opposing party or to the detriment of the attorney's client. Bribery is no longer limited to material benefits, thus criminalizing the widest possible range of corruption transactions.

The reforms of substantive criminal law, however, are not sufficient in themselves to effectively combat crime in general and corruption in particular, as their implementation stumbles on the inefficient system of criminal justice. The serious problems in the criminal procedure were identified already in the Anti-Corruption Action Plan of *Coalition 2000* which contained the key recommendation to **develop and enact an entirely new Code of Criminal Procedure**. The latter is expected to ensure the openness and transparency of criminal justice and to transform the trial into a central stage of the criminal process. Instead of enacting an entirely new Code early on, however, the legislature and the government chose the opposite approach of piecemeal amendments often devoid of a consistent philosophy. As a result, only between the beginning of 1999 and the end of 2004 the *Code of Criminal Procedure* was amended and supplemented nine times and most of those amendments entailed serious controversies and debates. Some of the changes were even challenged before the Constitutional Court on account of their alleged inconsistency with the Constitution. The most recent amendments to the Code were enacted in October 2004 but they were primarily aimed at transferring a larger number of cases from the investigators to police inspectors within the Ministry of Interior. In the wake of EU's opinion that the effectiveness of the institutions of the pre-trial phase in Bulgaria needs to be increased, attempts were made to make judicial investigation part of the executive (Ministry of Interior). These were thwarted by the Constitutional Court which ruled that only a Grand National Assembly could make changes to the Constitution to that effect. As a result, the government resorted to extending the powers of police inspectors at the expense of the powers of judicial investigators mostly through changes in procedural legislation.

Irrespective of the well-founded criticism of criminal procedure reform, in the last five years some positive anti-corruption measures were adopted, such as the enhanced judicial review over measures to prevent absconding, the introduction of police proceedings, the abolition of preliminary inquiries, the setting forth of fines for parties, witnesses and expert witnesses whose failure to appear at a hearing without good reason results in adjourning the case, the introduction of plea

bargaining, etc. A special *Law on the Protection of Individuals at Risk in the Context to Criminal Proceedings* was passed (to take effect in May 2005) prescribing measures to ensure the safety of individuals whose testimony, explanations or information are essential to the prosecution of serious intentional offences or organized crime.

It was only in 2004 that, after huge delays and a series of contradictory amendments to the *Code of Criminal Procedure*, the government approved the National Criminal Justice Reform Concept drawn up by the Ministry of Justice. The concept provides that an entirely *new Code of Criminal Procedure*, long-overdue, would be enacted and includes many other recommendations made by *Coalition 2000* in its Anti-Corruption Action Plan and reiterated in its annual Corruption Assessment Reports. The government has publicly committed itself to the ambitious task to present to parliament a new *Draft Code of Criminal Procedure* before the end of its term of office (summer 2005), with a view to having it passed by the next National Assembly by end-2005. The seriousness of this commitment is reconfirmed by the fact that it was entered, together with the time schedule for its implementation, in the additional position papers presented by Bulgaria under Chapter 24, *Justice and Home Affairs*, in its accession negotiations with the European Union.

Although compelling for the purpose of judicial reform and the combat of corruption, the adoption of a new *Code of Criminal Procedure* may well prove to be an end in itself. On the one hand, the new procedural code is not prepared in parallel to an entirely new *Criminal Code* while that would be the only way to create a coherent and consistent set of substantive and procedural norms. On the other hand, the new *Code of Criminal Procedure* should be passed after the issue of the organization and structure of the judiciary has been resolved, in particular as regards the location and functions of the public prosecution and the investigation. If the Constitutional provisions on the structure and organization of the judiciary are to be amended after the adoption of new procedural legislation, another series of legislative amendments would become necessary.

2.4.2. Other Legislative Measures to Curb and Prevent Corruption

The obsolete, often inconsistent and incomplete legal framework on other areas of law might not be directly relevant to corruption but still creates, to one extent or another, conditions that are conducive to its flourishing and spread. The Anti-Corruption Action Plan of *Coalition 2000* advanced **specific proposals to amend some rules of civil, commercial, administrative, labor and family law and of the relevant procedural laws**, in order to:

- simplify the procedures for the acquisition of ownership, commercial transactions, privatization, concessions, and any other areas where private interests intertwine with power and state authority;

- reduce to a minimum the possibility of the administration to interfere in business;
- simplify the incorporation of commercial companies and adopt a central administrative registration procedure;
- accelerate the insolvency procedures;
- amend the process of enforcement to ensure speed and efficiency.

The annual Corruption Assessment Reports have analyzed and evaluated the measures put into effect and the results of their implementation, and also recommended further improvements. To sum up, it is clear that regardless of the progress made in some areas legislative reform has not been consistently rooted in a sound conceptual basis that would allow tackling the existing problems comprehensively. The mechanisms of enforcing the novel legislation are still underdeveloped.

The efforts to provide a legal framework in a few spheres critical to the fight against corruption are particularly noteworthy.

- The passage of the *Law on Limiting Administrative Regulation and the Administrative Control on Economic Operations* at the end of 2003 and the introduction of the principle of tacit consent create prerequisites for a swifter and more effective administrative service delivery. The rules on tacit consent, however, are not accurate enough, as the principle is meant to apply unless otherwise provided in a law. In other words, a possibility for tacit refusal is still there and at the same time it is not specified which body should ascertain the existence of tacit consent. While the law has narrowed down the room of the administration to abuse its discretionary powers and the chances for corruption in administrative service delivery, the insufficient administrative capacity of the central and local administrations to enforce it and the continued presence of rules inviting ambiguous interpretation open the door to the use of corrupt practices.
- The amendments to the *Family Code* (enacted in 2003) focused particularly on adoption, mostly intercountry adoptions that have frequently given rise to significant suspicions of corruption in the past few years. The new rules are in line with the *Convention on Protection of Children and Cooperation in respect of Intercountry Adoption*, better protect the interests of the child and set forth more transparent procedures.
- In order to combat corruption, it is especially important to effectively reform the enforcement of judgments. This area has been repeatedly identified as a notorious example of delays, inefficiency and a fertile ground for corrupt practices in all Corruption Assessment Reports, despite the numerous legislative amendments undertaken between 1998 and 2004. A serious attempt to introduce radical reforms in this area was the *Draft Law on Private Enforcement* under which the

enforcement of private claims would be entrusted for the first time to private, rather than public enforcement entities. Although the full substitution of private enforcement for public enforcement remains debatable and the possibilities to combine both approaches seem to have been ignored, introducing private bailiffs would certainly limit the illegal collection of claims and narrow the ground for corruption. The implementation of that reform should go hand in hand with relevant amendments to the – or the adoption of an entirely new – *Code of Civil Procedure*, so as to streamline and improve the enforcement proceedings and protect to the maximum extent the interests of both parties to such procedures.

- A legislative mechanism intended to combat crime in general and corruption in particular that has generated a lot of debate was the *Draft Law on the Forfeiture to the State of Property Acquired through Criminal Activity* developed by the Ministry of Interior. The provisions on prompt freezing and forfeiture of criminal assets in the draft could step up the fight against crime. In order to achieve that, however, sufficient guarantees against any possible abuse should be built into the law. Following the initial public presentation of the draft and before it was submitted to parliament and voted on at first reading in the fall of 2004, it was substantially refined based on a series of discussions initiated and organized by *Coalition 2000* and involving Bulgarian and international experts. Nonetheless, some of the proposals and recommendations made have not been reflected in the text. The draft still has some shortcomings that should be rectified before its intended effect could be attained.
- A legislative area of key significance is the improvement of the legal rules on political parties. The reform of the **political party system** proposed in the Anti-Corruption Action Plan of *Coalition 2000* focused on the required transparency of political party activities, the introduction of a clear system of public funding for political parties and the setting up of efficient tools to audit the financial resources of political parties. The *Law on Political Parties* passed in 2001 addressed only some of those problems and the strongest criticism is generated by the retained possibility for political parties to receive anonymous donations which prevents the transparency of political party funding and the efficient control of some portions of that funding. This has led to a renewed effort to reform the legislation, so at the end of 2004 the parliament enacted a new *Law on Political Parties* setting out a number of anti-corruption measures to guarantee the transparency and accountability of political party funding, including *inter alia* a complete ban on anonymous donations, better mechanisms of monitoring the activities of political parties, etc. The expected positive effect of that law, however, has been compromised already at the outset as the requirement for re-registration did not apply to political parties that participated independently or in coalitions in the general elections in 2001 or that have at least one seat in Parliament.
- The *Draft Code of Administrative Procedure* aims at a fundamental and comprehensive reform of administrative justice. It also embeds solutions

for enhancing the quality of the work of public administration and limiting the possibilities for corruption practices, for refining the control over the administration and the establishment of an efficient and modern system of administrative justice. Particularly relevant to the fight against corporate corruption is the newly introduced provision of **administrative liability of legal persons**. The need for such liability has been reiterated more than once in the Corruption Assessment Reports (2002, 2003) and in a number of reports by the European Commission on Bulgaria's progress towards accession.

- During the preparation of an entirely new *Code of Civil Procedure* (work launched at end-2004), *Coalition 2000* presented a detailed opinion and **proposals to improve civil procedure legislation** by, *inter alia*, **restricting the possibilities for corrupt practices** explained in detail in the Judicial Anti-Corruption Program and the annual Corruption Assessment Reports. The following proposals can be outlined as most relevant to speeding up civil procedure and limiting the opportunities for corruption: replacing the existing three-instance proceedings with two-instance procedures coupled with the possibility for extraordinary review by the Supreme Court of Cassation; regulating the activities and liability of attorneys in the civil process; introducing a set of procedural measures to enhance the discipline of parties and to discourage the intentional procrastination of proceedings; new rules on summoning and serving notices, including more obligations on parties and liability for summoners, etc.

2.5. Better Access to and Quality of Public Services as a Prerequisite for Reducing Corruption

The implementation of efficient institutional and legislative measures to modernize the administration and its service delivery and to limit corruption in its work was a major area of action identified in the Anti-Corruption Action Plan of *Coalition 2000*. Many of the reforms proposed in that Plan and developed in detail in the Corruption Assessment Reports were actually implemented in the process of the current administrative reform.

In the period after 1997 a number of government documents were developed, e.g. the *Strategy for Modernization of the State Administration*, the *Program for Modernization of the State Administration* and the *Plan for Implementing the Strategy for Modernization of the State Administration*. The statutes adopted (*Law on the Administration*, *Law on Administrative Services for Natural and Legal Persons*, *Law on Civil Servants*) put in place the legislative framework of administrative activities as well as conditions to introduce a career civil service and improve administrative service delivery. Irrespective of the positive attainments, though, a fully effective service delivery to businesses and individuals based on common standards of efficiency and quality is still not in place.

2.5.1. Introducing New Information Technologies in Administrative Service Delivery

Implementing new information and management technologies in the public administration is a must for the enhancement of its performance and for an improved administrative service delivery, as well as for reducing the causes of and possibilities for corruption. The promptness and quality of public services are fundamental factor that shapes the attitude of the citizenry to the local and central administrations.

The implementation of modern IT makes the contacts between citizens and the administration shorter, easier and more transparent, thus curbing the playfield of corruption. Some processes amenable to automation in fact could eliminate discretion and thus eradicate the prerequisites for corruption. In other instances the automation of a process makes it easier to uncover the corruption trail. IT implementation paves the way to a radical change in administrative regulation and this inevitably dismantles the existing channels of corruption. Having said that, IT cannot substantially transform the style of administrative service delivery unless it is accompanied by relevant administrative reforms.

- *Implementing Some Elements of E-Government*

The *E-Government Strategy* (adopted by the Council of Ministers at the end of 2002) was developed by representatives of the public administration with the involvement of NGOs. It identified the lines of implementing modern and efficient governance in response to the general need for high-quality and readily accessible administrative services provided *inter alia* by online links between individual citizens and public administration institutions.

E-Government was launched in 2003 with the provision of four administrative services online (changing the address registration of an individual, obtaining information on the court registration of a commercial company from the *Delphi* system, and obtaining information for social security contributions made by natural or legal persons at the National Social Security Institute) when the users are in possession of a universal e-signature certificate. In the second half of 2004, the system of e-procurement was launched as well which covers the small procurement contracts awarded by the Ministry of Finance. Its application, however, is seriously hampered by the fact that many suppliers of goods and services do not possess universal e-signatures.

Of all electronic services operational as of the end of 2004, the last one on the list has the strongest potential to curb corruption. By 2005, a total of 20 services (twelve for individuals and eight for businesses) are planned to be deliverable in this way.

The introduction of e-government has been accompanied by numerous allegations, if not of straightforward corruption, at least of lobbying for a few private companies. For example, the so-called e-government portal was inconsistent with the Strategy, while the Concept Paper for

an E-Government Portal developed by the Coordination Center for Information, Communication and Management Technologies with the Council of Ministers openly favored a particular e-signature provider, etc.

E-Signature Legal Framework

The legislation on e-documents and e-signature enacted in 2001/2002 provides ampler opportunities for the introduction and use of IT in the public administration and to promote e-government. The Law on Electronic Document and Electronic Signature drafted by experts with the Center for the Study of Democracy within the framework of the *Coalition 2000* process represents the indispensable statutory basis to modernize government administration and administrative service delivery.

Detailed comments on the provisions of the law and other related materials are available in the book *Electronic Document and Electronic Signature. Legal Framework* (Sofia, 2004, 700 pages), a publication authored by the task force at the Center for the Study of Democracy that prepared the draft law and assisted with the development of its implementing secondary legislation.

For e-signature to have its anti-corruption effect, the Council of Ministers, the ministers, the National Statistical Institute and the National Social Security Institute should meet their obligation (in force as of January 1, 2005) to accept and issue e-documents signed by universal e-signature. The issuance of electronic licenses, approvals and other administrative acts should also become possible in the nearest future.

While a comprehensive online administrative process needs more time, the gradual implementation of e-administration would result in more transparency, accountability, flexibility and speed, lower costs and reduced bureaucracy and less corruption in administrative procedures.

- ***“One-Stop Shop” Service Delivery***

The introduction of administrative service delivery based on the one-stop shop principle started incrementally in 1999, first in some municipal administrations, and as of the spring of 2000 in some administrative bodies at the central level. Later, two government papers – *Concept Paper for Improving Administrative Services Based on the One-Stop Shop Principle*, and *Basic Model of One-Stop Shop Service Delivery*, launched the wider implementation of that mechanism. The provision of swifter and accessible administrative services of better quality leads to the gradual decrease in the level of administrative corruption.

“The one-stop shop principle has been implemented in 52% of the municipalities across the country, 73% of the structures of central administration, and 78% of district administrations. By the end of 2005 the one stop shop principle should be introduced in all administrations in the country.”

Source: Report on the State of the Administration, 2003

Most administrations provide access to services at one place, and only about one fifth of the administrations have not undertaken measures to apply the one-stop shop model. No solution has been found yet to ease the administrative procedures involving joint or sequential work by several different institutions. There is no uniform model of the one-stop shop service provision and integrated administrative service delivery that could replace the provision of services in the various administrations.

- *Information Centers at Municipalities*

The building up of municipal information centers with the purpose to ensure the speedier and more transparent provision of administrative services at municipal level started on the initiative of civil society in some municipal administrations. The number of municipalities having set up such centers that are fully one-stop shops has gradually increased (Blagoevgrad, Vratsa, Gabrovo, Dobrich, Montana, Rousse, Silistra, Sliven, Stara Zagora, etc.).

The programs are mainly implemented within the local administration and entail the development of administrative service delivery manuals, information catalogues, leaflets and similar materials depicting the procedures applied by each respective administration. Given the lack of a uniform catalogue of administrative services and the fact that different administrations frequently offer different names or designations for a service that is essentially the same, those materials are not always a reliable and accurate source of information for the respective administrative procedures.

The effect of having service and information centers is therefore often confined to providing the citizens or legal entities concerned with information, and to streamlining, though only partially, the procedures applicable to the provision of services by the specific administration.

2.5.2. Codes of Ethics in the Public Administration

The introduction of ethical rules as an additional tool to combat corruption in the public sector and strengthen the public confidence in government institutions started with the *Code of Conduct for the Civil Servant* approved at the end of 2000. The Code outlined the fundamental principles of and rules on the ethical behavior of civil servants. During the drafting stage, the existing international instruments in that respect were

neglected, including *Recommendation No. R (2000)10* of the Committee of Ministers of the Council of Europe to the Member States on *Codes of Conduct for Public Officials* adopted at the 106th session of the Committee of Ministers on 11 May 2000 and the *Model Code of Conduct for Public Officials* enclosed to the Recommendation. The insufficient clarity of the provisions of the Code and the fact that it was not promulgated in the *State Gazette* prevented it from becoming an efficient and working regulatory instrument. Irrespective of the recommendations of *Coalition 2000* made in its Corruption Assessment Reports 2001 and 2002, the Code was not amended and failed to achieve its purpose.

It was only in 2004 that a new *Code of Conduct for Public Administration Officials* was approved, already on the basis of the *Code of Good Administrative Behavior* adopted in 2001 by the European Parliament. The new Code is free from some of the shortcomings of the previous text. It has extended the scope of application of ethical rules so as to cover not only the persons enjoying the status of civil servants but also the other employees in the public administration. Another improvement is the link between the breach of ethical standards and disciplinary liability. This differs substantially from the approach adopted in the previous Code whose ethical rules were mere recommendations with awareness-raising and educational effect. The conditions are therefore in place now for the efficient application of the rules and a genuine alignment of officials' behavior to the standards embedded in the Code.

Along with those advantages, the new Code still needs improvement as it fails to provide sufficiently clear and detailed rules on the personal behavior of officials or any efficient mechanisms for its enforcement – there are no effective mechanisms to detect or to rectify violations of the Code.

3. THE BEGINNING OF ANTI-CORRUPTION REFORM IN THE JUDICIARY AND IN LAW ENFORCEMENT

Judicial reform in Bulgaria started in the beginning of the nineties, as part of the ongoing process of transition to democracy. Unlike the political and economic reforms, reforms in the judiciary are slower which is attributable to some extent to the conservatism inherent in and needed by the judicial branch of power. In addition, **the delay and inconsistency of judicial reforms in Bulgaria derive from a set of factors** brought about by the nature and the peculiarities of transition in the country, and from the fact that the judiciary appears to be the point where too many political and economic interests intersect.

On the one hand, the official proclamation of the independence of the judicial branch in the new Bulgarian Constitution (1991) and the gradual enactment of the specific laws governing it (the *Law on the Judiciary* and the *Law on the Supreme Administrative Court*) prompted the political parties to seek indirect means to influence the judicial system. For that purpose, a large number of magistrates were superseded at all levels of the system. That approach is still manifested in the fight for votes within the Supreme Judicial Council (SJC) – the governance body of the judiciary – and most visible in the election of SJC members from the parliamentary quota. The SJC plays an increasingly important role as regards the professional development of magistrates and even in issues of management: it accords and removes guaranteed tenure, lifts the immunity of magistrates and disciplines them, appoints magistrates, including those at managerial positions, and removes them from office.

On the other hand, powerful economic lobbies need more than political leverage in parliament and in the government. In a country where the rule of law – with its fundamental principles of judicial review of administrative acts, resolution of legal disputes in court, and equal access of everyone to justice – is still in the process of development, these interests need also to “capture” the bodies of the judiciary, which is what opens a channel for the spread of corruption within the judicial branch.

Thirdly, because of its traditionally conservative mentality the judiciary as a whole responds with skepticism to any endeavor to radically change the status quo. The existing constitutional model under which the judiciary is composed of institutions with different purposes, functions and roles in the process (courts, public prosecution and investigation) makes it difficult to form a shared view on the reforms, hence the frequent occurrence of opposing opinions and ideas.

These factors are mostly to blame for the belated pace of changes and their inconsistency. The conduct of politicians and businessmen, and even by some magistrates, has distorted the very idea of an independent judicial branch. The judiciary defends its independence and claims it is free from political interference but in practice some of its members still serve different political and economic interests.

The role of the judiciary as an instance of last resort in controlling executive decisions which redistribute wealth and power opens the door to a tremendous corruption pressure on that branch. **The limiting and prevention of corruption in the judiciary is a key component of the fight against corruption in the whole society.** In other words, the anti-corruption effort in the judicial system must be a priority in the overall reform designed to make the administration of justice in Bulgaria more effective.

Judicial reform has significant **international dimensions** as well. Foreign partners and international organizations are particularly concerned about the progress of reforms in the judiciary, which has indisputable positive impact on the domestic reform agenda and has turned into a precondition for its success. The recognition of judicial reform as a matter of paramount importance and the reaching of consensus on the priorities of reforms, especially against the backdrop of strong political confrontation, would have been much more difficult without such an interest from abroad. External influence over anticorruption reforms may, on the other hand, bring certain risks. These are related to the feasibility of expectations for immediate results, which in turn may encourage Bulgarian institutions to pay lip-service and undertake rather formal and insignificant reforms. External pressure could result in piecemeal changes that are necessary in themselves but only in the context of comprehensive reforms. In addition, the conditions posed by international organizations binding judicial reform to, for instance, making particular progress in integration (European Union) or receiving a loan (World Bank) engage primarily the executive and have little consequences for the judiciary. If international organizations come to realize those risks the effect of their efforts for supporting the reforms would increase.

3.1. Civic Initiatives and Government Programs

As of the end of the nineties, the need for judicial reform with an ever stronger emphasis on its anti-corruption dimensions has been persistently placed on the agenda by the NGO sector – *Coalition 2000* through its annual **Corruption Assessment Reports**, the *Judicial Reform Initiative* with its **Program for Judicial Reform** (2000), the Center for the Study of Democracy through its **Judicial Anti-Corruption Program** (2003), etc. These efforts allowed the first steps to be taken towards a public-private partnership with the bodies of the judicial and the executive branches which has been quite beneficial in terms of drafting strategic and programmatic documents but not so fruitful in terms of day-to-day implementation.

Judicial Reform Initiative

The Judicial Reform Initiative was set up in 1999 in response to the explicit need for change and in sharp contrast to government claims that judicial reform had been completed. The Initiative, whose secretariat is the Center for the Study of Democracy, brought together well-established Bulgarian professional associations and NGOs involved in judicial reform, including the Union of Bulgarian Jurists, the Association of Judges in Bulgaria, the Chamber of Investigators in Bulgaria, the Legal Initiative for Training and Development, etc., as well as representatives of state institutions, including magistrates, and individual experts. As a result of its activities, in 1999-2000 a *Program for Judicial Reform* was prepared which identified the priorities of judicial reform: promoting the independence of the judicial branch, enhancing the professional capacity and the accountability of magistrates, modernizing the operation of judicial bodies and their administration, opening the judiciary towards the public, developing the legislative basis of reforms.

In addition to public pressure, important incentives for change over the past years have been the evaluations provided by a number of international organizations and institutions, including the European Commission through its Regular Reports on Bulgaria, the Venice Commission, the Central European and Eurasian Law Initiative of the American Bar Association through its *Judicial Reform Index* (2002, 2004), etc. All these provided analyses, critical remarks and proposals for the further development of judicial reform. Particularly important among those are the requirements formulated during the negotiations for Bulgaria's accession to the European Union.

After a long period of turning a deaf ear to the need for reform and making piece-meal changes in the judicial system, since 2001 the government, and recently the judiciary itself have undertaken steps to respond to both the internal and the compelling external challenges facing the system.

- The first official attempt to place judicial reform on a sound conceptual basis was the *Strategy on the Reform of the Bulgarian Judicial System* adopted by the government on 1 October 2001 and the subsequent *Program of Implementation* of March 2002. The priorities of these documents largely coincided with the goals and measures identified in the 1998 Action Plan of *Coalition 2000* and the Program for Judicial Reform developed under the *Judicial Reform Initiative*.

The first two years following the adoption of the Strategy saw no particular progress in terms of implementing the measures embedded in it. The judicial system was still viewed negatively by the public and by the European and other international institutions. These attitudes, and Judgment No. 13 of the Constitutional Court of 2002 which declared

anti-constitutional a number of amendments to the *Law on the Judiciary*, forced the government to update the Strategy and the Program of its implementation in the spring of 2003. It should be mentioned that at that time the political parties in parliament arrived at a consensus on the **priorities of judicial reform** and these were included in the *Declaration on the Guidelines to Reform the Bulgarian Judicial System* signed by the parties on 2 April 2003. Although the solutions envisaged there are not comprehensive enough, the Declaration is a good beginning that paves the way to a wider consensus on judicial reform. Its potential remains underused but is certainly a must for the forthcoming Constitutional and legislative amendments in this area.

„The processes of eliminating corruption in the judiciary, ensuring the speedy and effective functioning of the judicial system, modernizing the operation of courts, prosecution offices and investigation services, are relatively slow.”

Source: Report on the Program of Implementation for the National Anti-Corruption Strategy, as of 30 August 2003

- In February 2004, the Supreme Judicial Council approved a *Strategy for the Fight against Corruption in the Judiciary* (February 2004) with the following objectives: achieving a stable administration of justice; enhancing public trust in the judiciary; enabling larger transparency and efficiency in the work of judicial authorities; introducing efficient mechanisms to detect and sanction corrupt practices among magistrates; creating preconditions for zero-tolerance of citizens to corruption in the judiciary; ensuring active civic involvement in the prevention and detection of corrupt practices in the judicial system.

The measures identified in the Strategy and developed in detail in the Program of its Implementation 2004-2005 are designed primarily to reform the work of magistrates by *inter alia* reinforcing the managerial capacity of the Supreme Judicial Council, promoting the status of magistrates, putting in place anti-corruption monitoring mechanisms within the judiciary, ensuring the transparency of judicial proceedings, automated case assignment, etc. The Strategy also prescribes measures to reform the operation of court administration such as enhanced control of document processing, easier access to administrative services provided by the judiciary and refined mechanisms for the appointment, career development and disciplining of clerks. A separate part of the document provides for measures to advertise the anti-corruption efforts of the judiciary, *inter alia* through the mass media.

The dynamics of the measures adopted, however, do not follow the inherent logic of the strategic objectives but seem to be influenced by international factors and domestic politics.

Proposals of the Center for the Study of Democracy for counteracting corruption in the judiciary

The *Judicial Anti-Corruption Program* and the Corruption Assessment Report 2003 outline the parameters for comprehensive solutions to the problems in the judiciary. These documents elaborate on the proposals made in the *Program for Judicial Reform* while building on a number of suggestions in the government *Strategy on the Reform of the Bulgarian Judicial System* and on the measures proposed by different civic anti-corruption initiatives in Bulgaria and in some international instruments to monitor and evaluate judicial reform in Bulgaria. Although many of the proposals made could be subject to debate further refinement, they build on the understanding that a comprehensive approach comprising constitutional, legislative, organizational and institutional reforms is necessary.

3.2. Constitutional and Legislative Measures

The success of anti-corruption efforts in the context of judicial reform depends on the necessary amendments to the Constitution and to the overall legislative framework of the country. The amended and supplemented rules of Chapter Six of the Constitution enacted on 24 September 2003 formed the first step to breaking a clearly malfunctioning model. The amendments also helped overcome the difficulties for legislative changes in respect of the judiciary created by the judgments of the Constitutional Court. Although they were passed unanimously, the changes to the Constitution should not be overemphasized. The parliamentary debate on the Constitution was confined solely to the requirements posed during the EU accession process and failed to promote large-scale changes with long-term effects. The Parliament failed to bring about some broader changes which do not necessitate the convocation of a Grand National Assembly (Judgment No. 3 of the Constitutional Court of 10 April 2003).

Even with their new wording, the modified principles of limited (functional) immunity of magistrates and terms of office for the administrative managers of judicial bodies, as well as the adjustments to guaranteed tenure actually reproduce the current structural problems of the judiciary. This is equally valid for all the three branches of the judiciary – the courts, the prosecution system and the investigation services – as the changes failed to take account of the different factual status of judges, prosecutors and investigators stemming from their different powers and roles in the process and from the different level of transparency, the different recruitment, appointment and promotion policies applicable to them.

The Politics of Appointment in the Judiciary

The terms of office were introduced by the Supreme Judicial Council elected in December 2003 and composed under the previous system, i.e. the quota principle. That procedure, especially given the election of the parliamentary quota by a simple majority, largely enables the ruling majority/coalition to influence indirectly the appointments of the heads of courts, prosecution offices and investigation services and the adoption of other decisions essential to the judiciary. In addition, the members of the different branches of the judiciary elected to the judicial quota often uphold their narrow institutional views that may be even conflicting. All this makes it difficult for the members of the Council to form uniform and objective opinions. The appointments of administrative heads are frequently the result of unprincipled compromises and take place without mandatory criteria and alternative nominations, especially in the prosecution offices and the investigation services.

Likewise, the adoption of these partial changes before other reforms necessary for the judiciary and the other branches of power prevents the striking of the right balance between those powers and the efficient interaction among them.

In addition, the *Law on the Judiciary*, which provides for its governance, did not attain its purpose to build an independent, efficient and corruption-free judicial power. It has been amended and supplemented on numerous occasions since its enactment in 1994. The ambitious attempt to improve the operation of the system and eradicate the prerequisites for corruption in the judiciary by the 2002 amendments to the law met with disagreements and criticism on the part of some units and bodies of the judiciary, and of some professional groups, and ultimately failed as most of those amendments were declared unconstitutional.

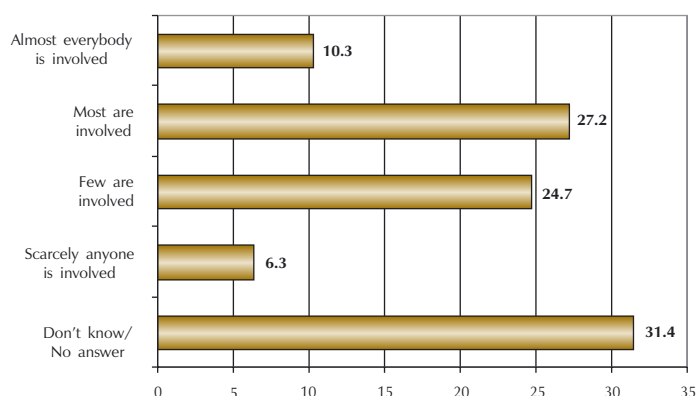
The latest and most significant amendments to the *Law on the Judiciary* were enacted in the period 2003 – 2004, largely under the pressure of the European Union, and some of them elaborated on the earlier amendments to Chapter Six of the Constitution (*Judiciary*). They offered solutions for a number of problems identified as priorities of judicial reform already in the *Anti-Corruption Action Plan of Coalition 2000* and reiterated in the Corruption Assessment Reports, e.g. the introduction of competitions, professional evaluation, the adoption of statutory rules on the training of magistrates and on the measures to enhance their professional qualification, the setting up of a National Institute of Justice, etc.

Despite the substantial anti-corruption potential of the recent amendments, some of them have not been in place long enough to assess their effect, while others are not implemented consistently. An indicative example in this context is the introduction of the principle of openness in the operation of the SJC. The decision of the SJC not to allow journalists to

attend the Council's sittings invited significant protests from the media and even a court appeal against the decision.

The need to improve the work and to resist corruption within the administrations of judicial bodies has been unduly neglected for a long period. The deficient operation of court administration and the corruption practices involving court clerks affect the quality of operation of the judicial bodies and bear negatively on the perceptions the public entertains of the judiciary. It is quite impressive that the public at large and the magistrates have quite different opinions on the spread of corruption among the administrative personnel of judicial bodies.

CHART 9. PUBLIC OPINION ON THE SPREAD OF CORRUPTION AMONG COURT STAFF, MAY 2003, (%)



Source: Corruption monitoring system of Coalition 2000

It was only in 2004, with the *Rules on Court Administration at Regional, District, Military and Appellate Courts* that some initial prerequisites have been put in place to modernize the administrative operation of the courts and to implement anti-corruption reforms there. Most of the newly-introduced solutions (e.g. random selection of judge-rapporteurs for the cases, broader access to court files, introducing the positions of “court administrator” and “administrative secretary”) mirror proposals made in previous years by experts and NGOs.

The frequent and largely haphazard amendments to the *Law on the Judiciary* driven by external factors cannot bring forth the required efficiency of the judiciary or represent genuine deterrence to inside corruption. This is due to the model and structure of the judiciary originally built into the Constitution and these cannot be changed by ordinary legislation passed by parliament (even worse, in the view of the Constitutional Court a regular National Assembly is prevented from amending the Constitution for that purpose). Another reason for the current situation is the resistance of quite a few magistrates to reforms and their strong desire to see the status quo preserved.

To attain the fundamental objectives of anti-corruption judicial reform – accountability, speed, efficiency and deterrence of crime, further constitutional and legislative amendments are required which should result in:

- Introducing clear-cut checks and balances between the branches of power by having **the National Assembly elect the Presidents of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor-General by a qualified majority** and for terms exceeding four years; the National Assembly should have

the power to remove those officials before their term expires and decide on lifting their immunity only under conditions and following a procedure strictly defined in the Constitution; a logical follow-up to this principle would be the **possibility to make these magistrates (in view of their administrative responsibilities) answer parliamentary questions in cases specifically provided for and under a procedure established in advance.**

- **Decentralization, transparency and accountability of the public prosecution system** by changing the hierarchical model to which it is confined at present; putting in place better guarantees for the independence of prosecutors when they decide on individual files or cases, which is in fact independence of any superior prosecutor or the administrative manager: e.g., requiring that any instructions given to a prosecutor should be in writing, giving the prosecutors the right to object against the instructions given by a senior prosecutor or withdraw from the case in the event of disagreement; introducing stringent sanctions to put an end to the unlawful practice of giving oral instructions to prosecutors down the line, etc.; **regular and ad hoc reporting by the Prosecutor-General** to the SJC, or alternatively to the National Assembly if the proposal to have the Prosecutor-General elected by parliament is accepted.
- Introducing the institution of a **public official empowered by the law to exercise prosecutorial functions**, or alternatively a team of such officials, outside the hierarchical structure of the prosecution as it stands currently. Those officials should be elected by the National Assembly to perform long term functions (e.g. instituting preliminary proceedings, investigating, bringing and maintaining charges of suspected **crimes committed by MPs, high ranking government officials and magistrates**, or of suspected **corruption within the judiciary**, etc.) or elected for a specific case; those officials should avail of the immunity of magistrates.
- Reviewing comprehensively the concept of **immunities** granted to a large group of officials (MPs, members of the Constitutional Court, individuals in senior government positions).
- Strengthening the magistrates' right of independent decisions by limiting **the control exercised by superior magistrates as regards magistrates at lower levels** and excluding any direct intervention in the resolution of cases or improper pressure by senior magistrates on those at lower levels.
- Changing **the status of the SJC and the procedure for forming its membership** (including the number of its members, their election and term of office, and the eligibility requirements) – the members should only be elected by the bodies of the judiciary and the chairperson should be elected by the National Assembly and report to the Assembly both regularly and on invitation; if the parliamentary quota in shaping the SJC is retained, the election by Parliament should be by a qualified majority.

- In case the Constitutional model is changed, **the investigation and the prosecution should be taken out of the judicial branch**, while adopting a model based on a wide consensus. Until the existing Constitutional model is changed, **the organizational, personnel and financial management of the investigation and the prosecution should be separated from those of the courts within the SJC.**

Structural changes in themselves cannot provide solutions to all the problems facing the judiciary but their implementation – or failure to do so – would largely predetermine the content of any future decision relative to the governance, the roles and organizational principles of the judiciary, and the content of the entire procedural legislation.

3.3. Mechanisms to Combat Judicial Corruption and Ensure the Financial Independence of the Judiciary

In the past few years, the public and the businesses have persistently defined the judiciary as one of the areas where corruption thrives. Moreover, an increase is noticeable in the levels of corruption pressure and of the perceptions of corruption in this area. The increase in the average bribe amount concerns all the members of the judicial system, which in turn reveals the existence of a serious problem. On the other hand, the data of a survey (the first of its kind) conducted in the framework of *Coalition 2000* Corruption Monitoring System in 2003, *Corruption and Anti-Corruption: The Viewpoint of Magistrates*, suggest that half of the magistrates think that allegations of corruption in the judiciary are unfounded. Also, every branch of the judiciary tends to see the other branches of the system as guilty of corruption.

TABLE 10. ASSESSMENT OF THE LEVEL OF CORRUPTION WITHIN THE THREE GROUPS OF MAGISTRATES (%)

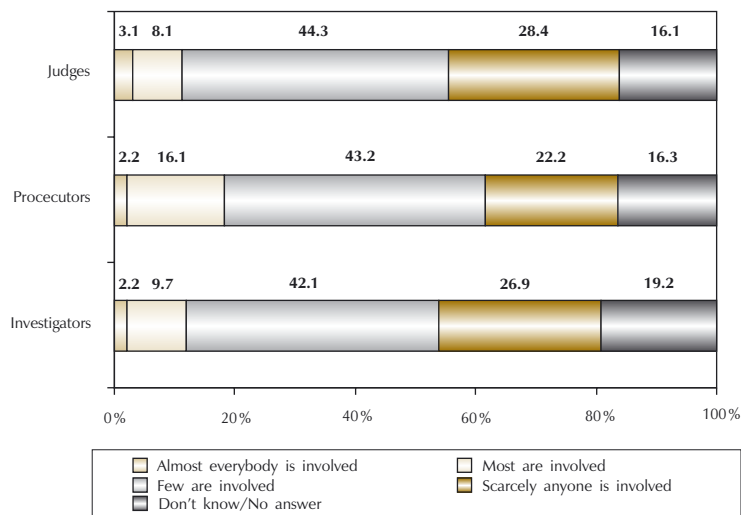
Magistrates	Corruption proliferated among: (Relative share of responses "Most or all magistrates are involved")		
	Judges	Prosecutors	Investigators
1. Judge	2.8	17.4	19.0
2. Prosecutor	11.9	7.9	10.3
3. Investigator	20.8	28.2	4.7

Source: Corruption monitoring system of Coalition 2000

The assessment of magistrates that corruption in the judiciary is a matter of distorted public opinion rather than a genuine problem is at serious odds with the perceptions of the public and the businesses. The reasons for this discrepancy could be sought both in the inaccurate self-evaluation or attempts by magistrates to conceal the problems in judicial system, and the insufficient publicity of the anti-corruption measures.

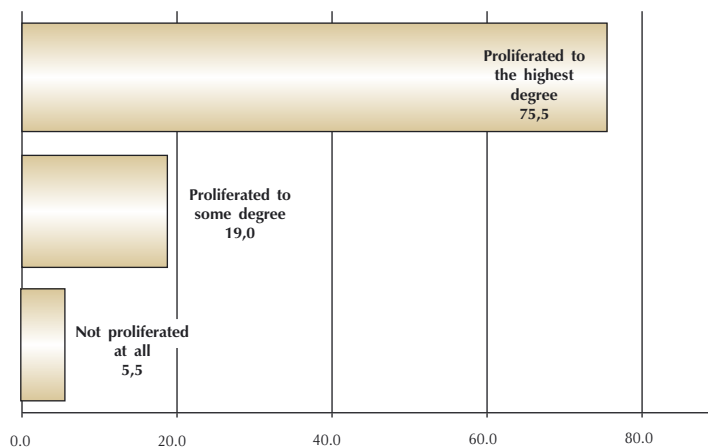
Regardless improved public relations of the courts, and the initial attempts of the prosecution to become more open to society, the work of the judiciary is not sufficiently transparent yet. It is only over the past two years that measures have been taken within the system to prevent inside corruption.

CHART 10. SPREAD OF CORRUPTION WITHIN DIFFERENT GROUPS OF MAGISTRATES (%)



Source: Corruption monitoring system of Coalition 2000

CHART 11. PUBLIC OPINION ON THE SPREAD OF CORRUPTION IN THE JUDICIARY (%)



Source: Corruption monitoring system of Coalition 2000

- *Specialized mechanisms to combat corruption within the judiciary*

Since the beginning of 2004 there has been an Anti-Corruption Commission at the Supreme Judicial Council. The Commission has powers to inquire into specific complaints and allegations and to request the disciplining of the respective magistrates; to analyze information about corrupt practices in the judicial system and develop and submit for approval to the SJC specific measures to prevent and combat corruption in the judiciary. From the beginning of its term until mid-2004 the Commission handled a total of 84 complaints and allegations by citizens; of these, 31 were transmitted for verification to the relevant superior judicial body; in 21 cases there are pending inquiries, while 10 files were closed with opinions by the superior judicial bodies that no corruption-related offences had taken place.

At the Supreme Prosecution Office of Cassation, a special department was set up, Abuse of Official Capacity and Anti-Corruption. As of April 2002, all corruption offences (i.e. bribes, abuse of official capacity, embezzlement by public officials, smuggling) are subject

to special monitoring and supervision for legality by the Supreme Prosecution Office of Cassation. In 2004, the operation of that department became more visible to the public but the number of corruption-related indictments presented to court is still modest, and no single investigation proceeding has been opened against a magistrate.

The mechanisms to combat corruption within the judiciary are underdeveloped and lack efficiency. There are no external mechanisms either to monitor or inquire into instances of internal corruption (such as an independent prosecutor). No separate statistical data are collected for

corruption offences committed by magistrates and court clerks despite the numerous recommendations along these lines made by NGOs. The introduction of functional immunity by the 2003 Constitutional amendments has not improved the detection rate, nor has it facilitated the prosecution of corruption acts committed by magistrates.

- *Codes of Ethics within the judiciary*

The adoption of ethical rules within the judiciary started on the initiative of the professional organizations of magistrates and court clerks already in 1998-1999 but the provisions of that period were not binding and merely intended to demonstrate good will. The 2004 amendments to the *Law on the Judiciary* empowered the SJC to approve rules of professional ethics for magistrates and envisaged disciplinary sanctions for their violation. It thus became possible for ethical norms to turn into an additional factor to promote the status of magistrates, curb corruption and strengthen confidence in the judiciary.

The rules of professional ethics of prosecutors were drafted jointly by the Association of Prosecutors in Bulgaria and the National Association of Bulgarian Prosecutors, while the Ethical Code of Investigators was endorsed by the Chamber of Investigators. These two sets of rules were approved by the Supreme Judicial Council in the beginning of 2003, and the Rules of Professional Ethics for Judges prepared by the Association of Judges in Bulgaria were approved by the SJC in the beginning of 2004.

Nonetheless, the mechanisms to implement this kind of responsibility are still underdeveloped as the powers and the capacity of the Supreme Judicial Council with respect to disciplinary proceedings should be extended and refined. This has been stated in the Corruption Assessment Reports 2002 and 2003 and was confirmed by the survey *Corruption and Anti-corruption: the Viewpoint of Magistrates* according to which 37.4% of the magistrates were of that opinion.

The National Association of Court Clerks approved Standards for Service Delivery to Citizens and a Code of Ethics for Officials in the Court Administration which is binding on all court clerks and also provides for disciplining those of them who violate its provisions.

- *The budget of the judiciary*

The inadequate budget and poor facilities of the judiciary are identified by magistrates as a major impediment to an efficient judicial reform. Despite the wider powers of the Supreme Judicial Council to draw up and present the budget of the judicial branch as a percentage share of GDP, the overall amount available to the judiciary remains far below European standards. In EU member states, judicial budgets are normally 2-4% of GDP, while in Bulgaria the budget was only 0.54% of GDP in 2004.⁵ In its attempt to resolve this long standing problem, the SJC has gradually engaged in a dialogue with the legislature, in particular with

⁵ Judicial Reform Index, volume II, April 2004

all the parliamentary factions, instead of openly confronting the other branches of power as in the past.

The SJC, however, does not yet have sufficient capacity to effectively manage the resources and their earmarking, allocation and spending is governed by decisions made without any transparency, often based on subjective factors rather than on the genuine needs of different judicial structures.

- *Introduction of New Technologies in the Judiciary: Anti-Corruption Expectations*

In the past few years different measures have been taken, primarily by the non-government sector with international support, to introduce new technologies in the operation of the judiciary: automated file registration systems, automated case management system (the software was developed by a USAID-supported project and provided to the SJC), other measures implemented in individual courts, etc. All these efforts aim at improving the work of courts and make it more transparent, while limiting corruption factors. Their implementation, however, has benefited mostly a few pilot courts involved in specific projects or courts whose heads are personally committed and very pro-active. Although in 2003 the SJC approved a nation-wide case management system, the number of courts having implemented it was more than moderate (about 30 of the total of 153 courts throughout the country as of end-2004). However, even where the registries of the courts work in an electronic format, the security of information is not guaranteed and the documents processed and stored in an electronic form are exposed to the same risks as the prevailing paper documents. The SJC and the government (Ministry of Justice and Ministry of Finance) should engage in a dialogue in order to avoid overlapping projects. The Research Support and IT commission set up with the SJC should be pro-active in this process, as the beneficiary under any such project is the judiciary as a whole, not individual government officials.

The adoption of specific legal rules is expected enabling the parties to proceedings and the courts to undertake procedural steps in an electronic format as well. At the end of 2004, the Council of Ministers approved some proposed rules (draft laws to amend and supplement the *Code of Civil Procedure*, the *Code of Criminal Procedure*, the *Criminal Code*, and the *Law on Electronic Document and Electronic Signature*) to enable the filing and issuance of e-documents in the judicial system affixed with a universal e-signature. The proposal was prepared by an interagency expert task force involving inter alia representatives of the Center for the Study of Democracy.

The new legislation should be adopted shortly and should be backed up with appropriate facilities for its implementation. This is expected to speed up judicial work, enhance transparency and restrict corruption among magistrates and the court administration.

- *The Inception of Registration Reform*

The idea to adopt a simpler set of rules on the registration of commercial companies and make their registration an administrative, rather than a judicial procedure, and ease the rules on real estate transactions was originally formulated in the Anti-Corruption Action Plan of *Coalition 2000*. Further to a study of the drawbacks of the registration system in Bulgaria which appears to be flawed by corruption, the annual Corruption Assessment Reports after 2002 have consistently upheld the conceptual view that a thorough registration reform is needed. These ideas have been presented many times to the ministers of justice, finance, and economy, to businesses, etc., and were finally endorsed by all.

The business community, foreign investors, NGOs and citizens all see the current system of registration as an inefficient, unreliable and insufficiently transparent area often marked by improper influence and corruption. In Bulgaria, it takes an average of 30 days to incorporate a company, 21 of them being necessary for registration in court. This is much longer than the period of 18 days fixed by the European Commission already in 2002 and nearly ten times longer compared to the countries with the most advanced registration systems in Europe. On the other hand, court registration increases unnecessarily the workload of the courts as it is not a judicial activity *per se*. In 2003, the entries of various details in the commercial registers amounted to nearly 50% of the total number of proceedings instituted at the district courts, while in Sofia City Court alone registration proceedings were 62% of all cases.

A Strategy for Establishing a Central Electronic Register of Legal Persons and an Electronic Registries Center of the Republic of Bulgaria has been submitted to the Council of Ministers for approval. The Strategy was drafted by an interagency expert task force chaired by the Minister of Justice and involving representatives of the Minister for Public Administration, the Ministry of Justice, the Supreme Judicial Council, the Ministry of Economy, the Ministry of Finance, the Ministry of Regional Development and Public Works, the Ministry of Agriculture and Forests, the Ministry of Transport and Communications, the Administration of the Council of Ministers and the Center for the Study of Democracy. The steps undertaken by the Ministry of Justice and the government to implement the registration reform are based on the preparatory work of the expert group at the Center for the Study of Democracy in 2001 – 2003 summarized in a report published in 2003 (*Opportunities for Establishment of Central Register of Legal Persons and Electronic Registries Center in Bulgaria*).

Under the Strategy, the existing court registration procedures should be replaced with uniform and standardized administrative procedures, the registers should be centralized and converted into electronic ones, and each entity would be assigned a unique ID number.

The development of a modern registration system in Bulgaria should produce a better environment for business. In particular, it is expected to enhance speed, security, reliability, and equal opportunities, while

helping get rid of the errors and of all possible forms of corruption abundant in this segment of judicial work.

3.4. Anti-Corruption Reform in the Ministry of Interior

The Ministry of the Interior (Mol) is a government institution of crucial importance for detecting and punishing corruption. Combating corruption within the Ministry itself, therefore, is decisive for its anti-corruption efficiency with regard to the other structures of the public administration. In the beginning of his term of office, the current Minister of the Interior declared in public that he had not suspected “that such corruption existed in the Mol”. That was the first case after 1990 when the problem of corruption in the internal security system was put forward at the political level. Previous criticisms of the Mol system had focused either on officers who had served the communist regime or on reshuffles to benefit one or another political party. Much less common had been discussions on links between Mol officers and notorious criminals. In fact, the comments of the Minister just came to confirm facts that were no secret to the general public: corrupt behavior existed in most of the Mol structures and at almost all levels, starting with tens of thousands of bribes paid to traffic police every year and reaching the top levels of special services and the Ministry itself.

In conformity with the goals set out in the National Anti-Corruption Strategy, the **Mol developed its own anti-corruption program** in the autumn of 2001. The implementation of the programs included the following specific measures:

- Establishment of an Internal Anti-Corruption Coordination Council. The Council was headed by the Deputy Minister in charge of combating organized crime and corruption. The main objective of that new structure was to show that combating corruption in the security system was given topmost political priority and that corrupt officers could not rely on protection by their political contacts;
- The strategy envisaged the establishment of a department to combat corruption within the Mol Inspectorate and the enhancement of the status of anti-corruption units at the Ministry. Although corruption had been high on the agenda of the Inspectorate, there had been no follow up on many reports and even proven cases due to pressure exercised from within by higher levels;
- At the lower levels of national services and regional subdivisions specific officers were designated – parallel to the discharge of their routine duties - to check corruption reports. The intention was to establish a tool at the local level in order to increase the risk associated with corruption practices and to counteract incentives which deter the reporting corruption at lower levels;
- Steps were taken to promote the involvement of civil society and to improve the interaction with the media in combating corruption within the Mol. Prior to 2001, the problem of corruption within the Mol was shunned by policy-makers and the media. The effect of

the political decision to ensure greater transparency was that the Inspectorate launched regular publication of data on its investigations which had been used only for internal purposes before. The subsequent public debate and media coverage came to show that the Mol was perceived as the institution which worked much more actively than the other government institutions, although its efforts were still insufficient.

In 2003 and 2004, anti-corruption became part of the cooperation with EU partner institutions. 2003 saw the beginning of a twinning project for combating corruption, where the partners were the Mol, the UK Home Office and the 'Anti-Corruption Command' of New Scotland Yard. The objective of the project was to strengthen the Inspectorate and the Coordination, Information and Analyses Directorate (CIAD). The communication strategy proposed by the British partners to the Mol was oriented to the head office, the six national services of the Mol, as well as to the general public. With regard to the latter target group, the Ministry invited non-governmental organizations to join a Transparency Group which was expected to advise the Ministry on the efficiency of its communication with the general public. Experience, however, showed that few NGOs had the capacity to become effective partners of the Mol. By and large, in spite of the deeply rooted culture of excessive secrecy in the activities of the Ministry, it had become the government institution which provides the public with the most detailed information on the implementation of its internal anti-corruption measures, compared to other government institutions.

As a result also of the partnership with the British services, much **better balance was achieved between preventive and enforcement measures**. With regard to the latter, many investigation techniques applied by the New Scotland Yard were adapted and successfully introduced in the work of the Inspectorate. In June 2004, for instance, an integrity test was held under controlled conditions. It ended up with the detention of eight policemen alleged to have misappropriated lost money found and brought to the police by individual citizens. Such techniques should be developed and applied in other areas of operation of the Mol, where the risk of corruption is high. The introduction of all the new tools proposed in the cooperation with the UK is likely to need legislative changes related mainly to the punishment for provocation to bribery. This would be a guarantee that internal anti-corruption measures will continue after the end of the twinning project.

Some results of these steps are that in 2003 and 2004 the **Mol was the government institution with the greatest number of internal investigations** and of cases brought for public prosecution.

Nevertheless, the review of anti-corruption measures within the Mol conducted in the middle of 2004 highlighted the following **problems, the resolution of which would be indispensable for a breakthrough in the efforts to combat corruption**:

- Surveys point to frequent incidence of corruption at the low levels of the Mol. Graft opportunities range from various violations of traffic rules to the use of soft drugs. Such massive corruption practices would require staff of hundreds of officers and large local structures tackling corruption, at least in the beginning of the anti-corruption reform. At present, this is not feasible due to the limited availability of human and financial resources. At the same time, the pilot anti-corruption measures in the traffic and border police proved that organizational solutions and technical aids (these have become affordable thanks to the rapidly falling prices, e.g. closed circuit cameras installed at border check-points) could resolve a number of problems regardless of the scarce resources;
- Given the current organization, the disciplined offenders were mainly at the lower ranks: non-commissioned officers, junior officers and other servicemen of medium and low rank;
- Corruption activities are detected mainly on the basis of anecdotal evidence. In spite of some progress, there is still no comprehensive approach underlying the anti-corruption policy. Although, as mentioned, the policy balance has improved, still its main thrust is the detection of corruption already committed, while preventive measures or the establishment of an early warning system are of less importance. There is no integrated system to collect information in advance;
- The most important and serious cases of corruption carried out in an organized manner at key loci with and by senior officials are not detected due to the administrative and personal dependence among the officers in the various services.

These conclusions warranted a number of **new policies, which were introduced** in October 2004 and included:

- The specific actions which constitute corruption in the Mol were explicitly stated in an internal regulation. These include abuse of authority for personal or third party gain; involvement of officers in organized crime; unauthorized contacts with, protection of and provision of information to criminals; extortion of citizens, including suspects or offenders, etc.;
- Preliminary information about corruption is collected using open telephone lines to both the public and Mol staff, internet and various surveillance techniques;
- Reports of corruption go through a process of registration, reporting to superiors, vetting and follow up;
- Officers investigating corruption are organizationally independent and are freed from other duties.

An objective and accurate **review is needed to differentiate the corruption risk by groups of servicemen**. At present, the Mol employs 55 to 60 thousand people but it is not more than 10 to 15% that are exposed to strong corruption pressure. A possible solution is to develop a system for classification of risk levels by the following groups of servicemen:

- Senior officers who make decisions to undertake search operations, penal proceedings and administrative measures against criminals;
- Persons in direct contact with criminals (field officers at the criminal and economic police, the staff of the National Service for Combating Organized Crime, police investigators, etc.);
- Persons who are in charge of establishing administrative violations and making decisions on the spot (traffic policemen, fire safety officers, etc.);
- Border police;
- Those involved in procurement and the staff of logistics units.

Narrowing down the list of vulnerable groups would make it possible to implement an effective set of preventive measures with regard to the highest-risk groups and to detect corrupt behavior at an early stage.

It is important to discuss and adopt the following **technical measures** proposed by Mol experts:

- Introduction of a term of office for senior positions;
- Rotation of field officers, e.g. transfer to other areas and lines of operation and service, replacement of teams, etc.;
- Establishment of mechanism to collect and analyze information about the property and financial status of persons exposed to corruption pressure. The system should incorporate data from the annual declarations on the property and financial status of the staff, similar data on family members, private trips abroad, holiday-making at tourist facilities whose prices are well above actual income levels, etc.

4. CORRUPTION AND ECONOMIC DEVELOPMENT

The intervention of the government in the economy generates numerous points of conflict between private and public interests, which create favorable environment for corruption against the background of lacking institutional and administrative capacity and traditions. Corruption and the hidden economy, in their turn, are linked into a vicious circle for re-distribution of the country's economic resources outside the formal institutions of the market and the democratic government. The hidden economy expands not just because of the level of tax and social security rates but rather as a result of the inefficient and arbitrary application of tax and regulatory regimes and the existence of corruption.

Corruption strongly distorts the business environment like an arbitrary and non-transparent tax; it leads to lower efficiency and benefits from public services, creating incentives for companies to enter the hidden economy. When corruption turns into a systemic problem, i.e. when everybody perceives it as an integral part of business rules, it turns into an effective tool for resolving private problems but the negative public effects remain: larger hidden economy, deteriorating public services, and loss of economic resources. In this case, the public cost of corruption by far outweighs the economically measurable private benefits from corrupt deals: there is a waste of social capital and the public loses its trust in the rule of law and its equitable enforcement. Thus corruption creates conditions and incentives for the emergence of a considerable hidden economy. Participants in the hidden economy try to preserve the existing status quo to their benefit through corruption pressure and corrupt deals and thus they close the vicious circle. Corruption strongly erodes the opportunities for economic growth and, at the same time, makes it irrational and inefficient for individual institutions, organizations or citizens to counteract on their own.

The Anti-corruption Action Plan (1998) of *Coalition 2000* envisages consistent and continuous efforts of the public and private sector with a view to realizing simultaneous impact on all the elements of this vicious circle as an indispensable condition for achieving lasting anti-corruption effect: (1) reduction of the hidden economy; (2) creation of conditions for the development of a competitive private sector through privatization, liberalization and deregulation; and (3) improvement of the major fiscal mechanisms of interaction between the government and the business community – the taxation system, the customs and public procurement. These general objectives underpin a number of government documents issued over the period from 1998 to 2004 with a time horizon primarily to 2007: *the National Anti-corruption Strategy*, *the*

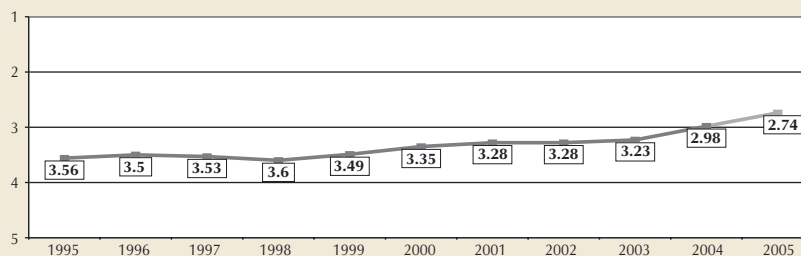
National Economic Development Plan, the Strategy for Modernization of the Public Administration, the National Employment Strategy, etc.

This section dwells on the progress towards the attainment of these objectives. Thanks to the joint efforts of business and non-governmental organizations, international institutions and government authorities, **substantial progress has been achieved in the establishment of a better business environment and the reduction of the share of the hidden economy and corruption in the economic sphere for the past seven years.** At the same time, many of the measures undertaken are of long-term nature; they call for further efforts and it is too early to draw final conclusions on the sustainability of their results. **There continue to exist considerable challenges in such spheres as the counter-action to the criminal economy and the related political corruption, the large-scale privatization, concessions and public procurement.** Further efforts are needed to improve the quality of some basic public services like the administration of justice, healthcare and education, and to further reduce the share of the hidden economy and the related corruption. **Against the background of the increasing importance of the private sector in the economy, businesses and their associations are not sufficiently active in anti-corruption reforms yet.** Corruption in the private sector is still at levels comparable to those in the public sector, posing a real threat to the stability of the economy in the event of adverse external shocks.

Bulgaria Joined the Group of Nations with Mostly Free Economy

„Now that Bulgaria is a member of NATO, the focus of public policy debate has shifted to the country's economic future.” [...] „Bulgaria's economic policy continues to reflect commitments to International Monetary Fund guidelines and European Union entry requirements. Fiscal policy has generally remained conservative. The government's record on privatization remains mixed. Bulgaria's ineffective judicial system continues to allow organized crime and corruption to hamper investment.”

Index of Economic Freedom for Bulgaria (1995 – 2005)



Note: The closer the value of the index to 1 the freer the economy.

Source: Index of Economic Freedom, Heritage Foundation and Wall Street Journal, January 4, 2005

4.1. Corruption, the Regulatory and Tax Burden, and the Hidden Economy

The deep financial crisis in the end of 1996 and the beginning of 1997, the hasty and non-transparent privatization accompanied by a number of corruption scandals and the numerous institutional deficits, put Bulgaria among the EU candidate countries with the largest share of hidden economy in GDP. According to a number of international estimates, the hidden economy in Bulgaria accounted for 36 % of GDP in 1999⁶. For the last seven years, parallel to the macroeconomic stabilization, the growing international integration and liberalization of the economy and the beginning of a series of structural reforms, **Bulgaria has undertaken specific measures to limit the hidden economy and corruption on the basis of public-private partnership.** The sustainable economic growth and the enhanced financial and banking intermediation have also created conditions for reducing the hidden economy.

Gray and Black Hidden Economy

The hidden economy encompasses business activities and their results, which are not covered by official statistics and by the competent government institutions and/or illegal business activities.

The gray economy is made up of activities which though not prohibited by the laws of the country are not declared before the government in conformity with the official rules and/or institutional requirements (declaration, registration, licensing, etc.).

The black (shadow or criminal) economy includes activities which are explicitly banned and prosecuted under the laws of the country and they are not registered by government statistics.

Source: Gray and Black Economy, Discussion Points, Centre for the Study of Democracy (2003)

Over the period from 1998 to 2005, a number of surveys, studies and fora on the nature and various manifestations of the hidden economy were conducted in Bulgaria, which were the first to attract a critical mass of public and political attention and to trigger the development of an adequate policy in that sphere. **One of the major contributions of Coalition 2000 in that respect was the leading role and the tangible policy impact of its research on cross-border crime, smuggling and the related corruption.** The data presented in those studies revealed that as a result of smuggling the state budget lost over USD 1 billion annually in the trade with the EU for the period 1998 – 1999 alone. The issue emerged as a focal point of political debate in the 2001 parliamentary elections. The newly elected parliamentary majority came to power with a mandate to reduce corruption and smuggling. The public efforts of *Coalition 2000* to focus anti-corruption reforms on the reduction of the hidden economy and the growing number of international benchmarking studies, including the *Regular Reports on Bulgaria's Progress towards EU Membership*, which showed a number of adverse consequences of

⁶ The Informal Economy in EU Accession Countries: Size, Scope, Trends and Challenges in the Process of EU Enlargement, Center for the Study of Democracy, 2003.

its existence for the country such as low employment rates, loss of competitiveness and income, poor efficiency of public services, etc., put the topic high on the political agenda. Following the beginning of reforms in the customs administration, **the Ministry of Labor and Social Policy, the Ministry of Finance and the Ministry of Economy announced a series of initiatives aimed at curbing the size and manifestations of the hidden economy in the country in 2002 and 2003.**

The New Employment Policy of the EU and the Index of Hidden Economy of *Coalition 2000*

In 2003, experts of *Coalition 2000* and the Ministry of Labor and Social Policy took part in the consultations of the European Commission and the Italian Presidency on the drafting of a separate guideline for combating undeclared work and the hidden economy in the 2004 European Employment Strategy. At the final conference on those preparations held in Sicily, Italy in December 2003, *Coalition 2000* presented for the first time the results of the new Hidden Economy Monitoring System (HEMS) and the Index of Hidden Economy. The index is used as a major monitoring tool for tracking the dynamics of the hidden economy and its components and for assessment and adjustment of relevant public policy.

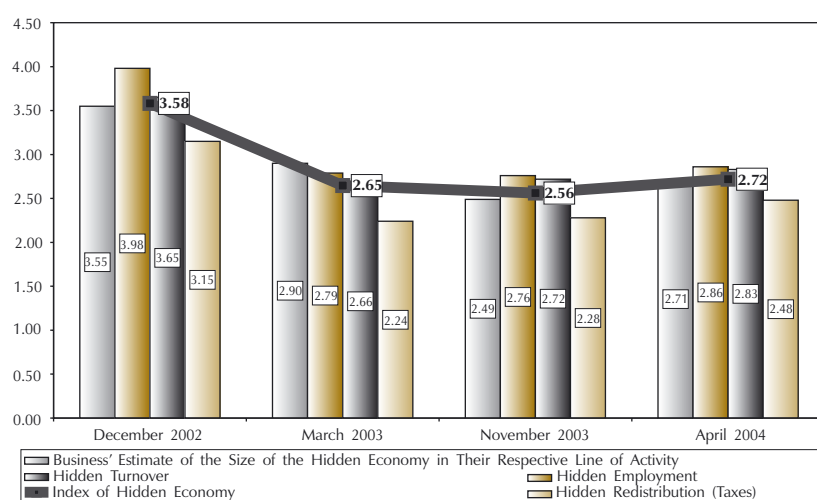
The Index of Hidden Economy is measured on a scale of 0 to 10. The closer its values to ten, the more negative the assessments of the size and manifestations of the hidden economy in the country. Index values closer to zero point to a low level of hidden economic activity. The Index of Hidden Economy comprises the following subcomponents:

- I. General assessment of the size of the hidden economy
- II. Specific manifestations of the hidden economy
 1. Labor relations (hidden employment)
 2. Turnover (hidden revenues)
 3. Redistribution (tax evasion)

The measures which the Ministry of Labor and Social Policy undertook to reduce hidden employment produced the most rapid and tangible effect on the hidden economy in this country. They were further enhanced by similar measures at the European level through the *European Employment Strategy and Guidelines*. The most effective measures related to the mandatory registration of all employment contracts with the National Social Security Institute and the subsequent increase of the supervision checks by the General Labor Inspectorate in the beginning of 2003. They brought about a considerable reduction in the number of people hired without any contract – from 25 % at the end of 2002 to 16.7 % in March 2003. The new employment contracts registered as a result of the measures reached some 162,500⁷. Notwithstanding the

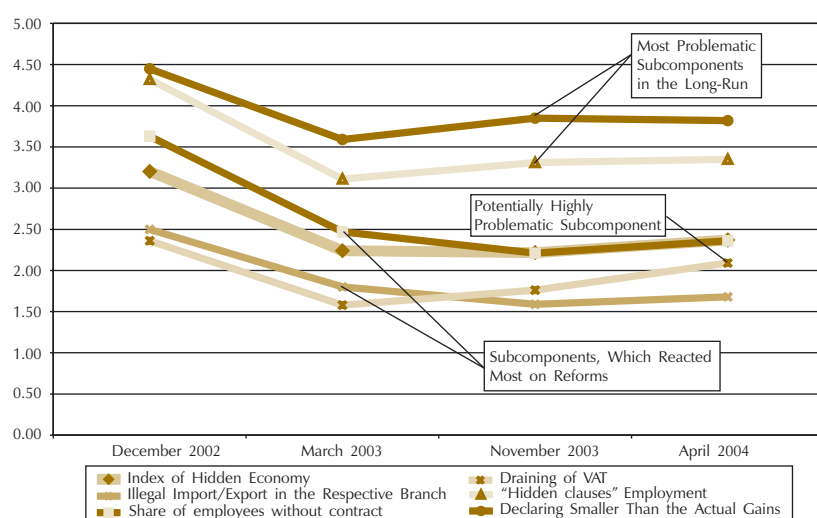
⁷ Iliev, P. Et al., *The Informal Economy in Bulgaria*, Center for the Study of Democracy (2004)

CHART 12. INDEX OF HIDDEN ECONOMY IN BULGARIA AND DYNAMICS OF ITS COMPONENTS (2002 – 2004)



Source: Hidden Economy Monitoring System (HEMS) of Coalition 2000

CHART 13. DYNAMICS OF THE INDEX OF HIDDEN ECONOMY'S SUBCOMPONENTS: LEADERS AND LAGGARDS (2002 – 2004)



Source: Hidden Economy Monitoring System (HEMS) of Coalition 2000

positive effect of those measures counteracting the informal economy, it should be noted that, due to their administrative nature, they were costly and short-term in nature. Their effect could quickly fade away or turn into a brake on the competitiveness of the economy. They should be supplemented by adequate steps to reduce the regulatory and tax burden and to improve the efficiency of some basic public services like social security and health care. There already is a tendency for a shift of hidden employment payments in enterprises to contracts with "confidential" clauses so that employees receive more than the amount officially stated in their contracts. The Index of Hidden Economy of *Coalition 2000* reveals that the effect of the measures undertaken by the Ministry of Labor and Social Policy is relatively weaker with regard to employment contracts with "confidential" clauses than it is with regard to hiring people without any contract. **The lack of confidence in the viability of the national social security and health care system due to widely spread corruption continues to generate long-term threats to reducing the size of the hidden economy** and corroborates the importance of the systematic approach to anti-corruption reforms.

Transforming Hidden into Registered Employment

The policy to combat undeclared (hidden) employment in the Republic of Bulgaria covers a set of incentive, restrictive and sanctioning measures:

- *Incentives – aimed at fostering the economic and social attractiveness of legal employment:*
 - Improving the conditions for development of private business, entrepreneurship and the investment climate in the country;
 - Reducing the tax burden and easing the administering of tax payments;
 - Encouraging investments in high unemployment areas;
 - Reducing the number of licensing, permit and official authorizations of business activities and streamlining the administrative process – 2003 saw the adoption of the *Law on Limiting Administrative Regulation and the Administrative Control on Economic Operations*, which entered into force in December 2003;
- *Restriction – to make hidden employment unattractive to both employees and employers and to encourage people to declare their activities:*
 - Continuing the obligatory registration of the signing, modification and termination of employment contracts;
 - Continuing the application of the statutory requirements for employers to become eligible beneficiaries under the *Law on Employment Promotion*;
- *Sanctions – control of the activities of enterprises and individuals.*

Institutions involved: Ministry of Labor and Social Policy, Ministry of Economy, Ministry of Finance, Employment Agency, General Labor Inspectorate, regional and municipal administrations, national representative organizations of employers and employees, non-governmental organizations.

Source: Employment Strategy of the Republic of Bulgaria 2004

4.1.1. Tax Burden

The Ministry of Finance (MoF) also announced a package of measures to reduce the hidden economy. Most of them related to existing long-term initiatives to reform the fiscal system, which the Ministry was already implementing in one form or another, such as the establishment of a National Revenue Agency, program budgeting, and the customs

reform. These measures have a systemic anti-corruption potential but it will not be until 2006 that their effect will be felt and will be adequately measurable. **The MoF proposals on the reduction of the hidden economy, which were anti-corruption landmarks, were the establishment of a Fiscal Investigation Service and the closing down of duty-free shops at the land borders of Bulgaria.** Both measures failed to gain sufficient support in Parliament and did not become operational. While the establishment of a Fiscal Investigation Service duplicated the functions of already existing government institutions and it was rejected on those grounds, **the preservation of duty-free shops could be viewed as a serious failure of the policy to reduce the hidden economy and corruption.** The explicit or covert opposition of Members of Parliament and whole parliamentary groups against the government initiative to close down duty-free shops at the land borders of the country was an alarming sign of the dependence of Parliament on strong vested corporate interests.

Measures of the Ministry of Finance to Limit the Hidden Economy

Current measures:

- Improving customs and tax oversight and discipline;
- Reducing the possibilities for VAT fraud schemes;
- Cracking down on the distribution of illegal software.

Future measures:

- Establishment of a Fiscal Investigation Service;
- Countering the sale of excise tax goods with false excise label or no excise label at all:
 - Introducing new specimen of excise labels for tobacco products and alcoholic beverages;
 - Improving the operation of warehouses for excise tax goods;
 - Closing down duty-free shops;
- Setting up a National Revenue Agency;
- Introducing of program budgeting;
- Establishing a Reporting and Information Centre;
- Launching e-commerce and e-procurement.

Source: Ministry of Finance (September 2003)

For the last 14 years, duty-free shops have turned into a sphere, of the highest political level intervention to distribute illegally-generated income⁸. They are a major source of smuggled excise goods in the country. Even the official turnover of duty-free shops in the amount of BGN 300 to 400 million annually alone is sufficient to indicate the size of the losses the national budget and legal business sustain. The

⁸ Centre of the Study of Democracy, *Transport, Smuggling and Organised Crime* (2004)

illegal profits from smuggling are used to support the infrastructure of the hidden economy and to guarantee its political protection. In this respect, **the major long-term challenges to anti-corruption reforms are to curb political corruption and the revenues from the criminal economy.** This calls for political will and active interaction of all responsible government institutions, the civil society and legal businesses. It is worth considering, for instance, the proposal of big petrol distributors to finance the establishment of a network for real time sales reporting at all petrol stations in the country. The smuggling of fuels and the related political corruption are another important financial channel for the shadow economy. The government support to such proposals would be a clear sign of existing will to counteract large-scale corruption.

TABLE 11. REVENUES AND CORPORATE INCOME TAX PAID BY DUTY-FREE SHOPS

Year	Revenues (BGN)	Corporate Income Tax Paid (BGN)
2000	251 085 204	6 926 406
2001	338 010 246	9 346 759
2002	344 527 053	9 361 902

Source: Ministry of Finance

The tax system remains strongly affected by corruption and generates hidden economy. Half of the businessmen and 43 % of the population believe that “almost all or most” tax officials are involved in corrupt activities. In a survey conducted by Vitosha Research Agency among tax officials, they disclosed that **corruption**

was most widely spread in operational tax control units, while the largest corruption deals were related to tax audits. Tax officials consider VAT collection as most prone to fraud attempts and VAT registered companies as most likely to try to evade taxation and social security payments.

There are many **prerequisites for corruption in the tax system**, which can be summarized in the following system of elements:

- The formal rules and regulations are formulated in a way that prevents their full implementation. They contain a lot of loopholes, which allow for discretionary interpretations and lead to considerable non-compliance;
- **The lack of effective channels for protection against discretionary administrative actions** through the judiciary and the widespread existence of open and effective possibilities to use corruption and political influence to avoid sanctions;
- **The existence of selective control and taxpayer inspection.** Corrupt practices most often relate to selective control and inspections which are usually purposeful and frequently politically or economically motivated;
- The emerging informal agreements between taxpayers and controlling authorities ensuring individualized application of legal requirements, i.e. collusion.

In parallel to the ongoing long-term reform for improving the performance of the tax administration, more measures are needed **to reduce its corruption potential** and to enhance civil society control over its activities:

- Reduction of the opportunities for corruption pressure by tax officials in the exercise of their controlling functions. Emphasis should be put on closing loopholes in the legal framework which create conditions for arbitrary interpretation and application of the law by tax officials and on the opportunities for improvement of the appeals mechanism. An overall review of the legislation in this field would be particularly useful to both tax officials and taxpayers;
- Shrinking the opportunities for corruption pressure on the tax administration by businesses and the conditions for corrupt collusion. It is necessary to introduce measures for improving risk management and audit control systems; a specialized unit to combat tax fraud (to inspect properties of suspicious origin, including those of tax officials); control and accountability of tax auditors; opportunities for rotation of tax inspectors; hotlines; internal control units; time limits for tax audits and for the enforcement of tax statements, etc. It would be useful to introduce tax audit effectiveness indicators. The demonstrated fiscal effectiveness of BGN 2.52 per tax audit in recent actions by MoF to reduce the hidden economy is not reassuring to the overall efficiency of the administration, but creates reasonable doubts that fines have been partially “privatized”;
- Expansion and improvement of the feedback system of MoF in connection with violations committed by the tax administration. Six out of the nine corruption reports to the Reporting and Information Centre of the MoF in 2004 referred to activities of the tax administration.

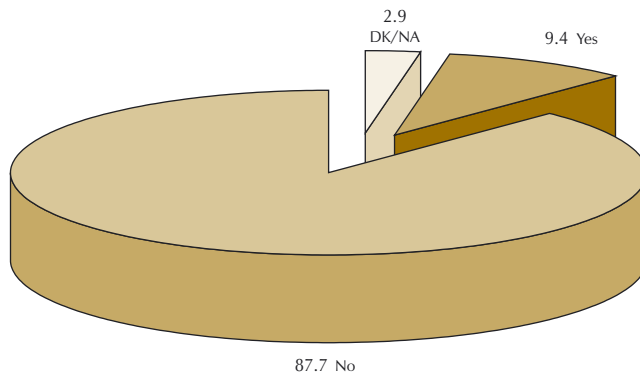
The reform of the tax and social security administration, the improvement of the services they provide and the reduction of their burden on business should remain high on the agenda of the government for reducing the hidden economy.

Effectiveness of Tax Inspections

Over the period from 1 January 2001 to 30 April 2003, the tax authorities conducted a total of some 294,000 inspections of stores and warehouses for alcoholic beverages and tobacco products. Seizures of illegally sold goods in the course of those inspections included approximately 656,000 bottles of alcoholic beverages (in 2001 – 210,000 bottles with false excise labels, in 2002 – 350,000, and in 2003 – 100,000) and 135,000 packs of cigarettes without or with false excise labels. The penalties levied amounted to BGN 740,000. All big offenders were reported to the prosecution but there is no information available as to the beginning of any investigation.

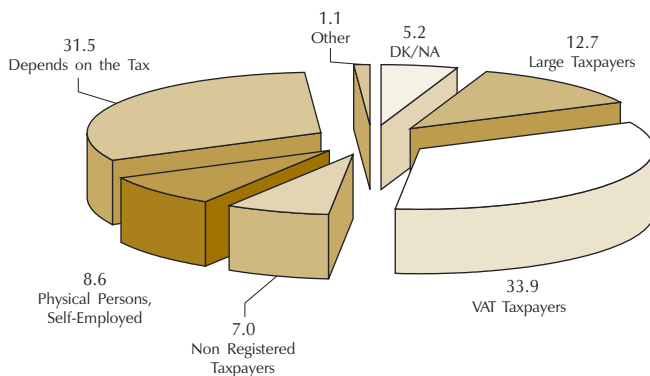
Source: Measures against the Hidden Economy, Ministry of Finance

CHART 14. INVOLVEMENT OF TAX OFFICIALS IN CORRUPTION ("HAVE YOU EVER ACCEPTED MONEY OR GIFTS") (%)



Source: Corruption Monitoring System (CMS) of Coalition 2000

CHART 15. TAXPAYERS WHO ARE MOST PRONE TO TAX EVASION, ACCORDING TO THE TAX ADMINISTRATION (%)



Source: Corruption Monitoring System (CMS) of Coalition 2000

In spite of government measures for reduction of the hidden economy and corruption, **there remain some powerful financial and fiscal factors which produce adverse effects:**

- **The preservation of the overall high redistribution weight of the government,** given the current level of development of the country. The government redistributes through its consolidated budget some 40 % of GDP. Particularly alarming in this respect is the discretionary allocation of the substantial budget surpluses for the recent years;
- The decentralization of public finances has not reached a level at which local governments can be independent from political corruption in their relations with the central government. The rather big share of central government allocation to municipal budgets and the allocation of budget surpluses are still strongly partisan and politicized.

4.1.2 Regulatory Burden

The third big sphere of reforms with considerable potential to reduce hidden economy and corruption over the period from 1998 to 2005 has been the reduction of the administrative and regulatory burden of the government. **Regulatory regimes have been analyzed in the annual Corruption Assessment Reports since 1999 and they have invariably featured among the three most frequently mentioned reasons for the existence of corruption in relations between the businesses and the government.** Anti-corruption measures in this field are long-term and difficult to gauge and therefore they are politically unattractive to governments.

Until 2004, the main anti-corruption measures in this respect were linked to making licensing, permit and registration regimes fewer in

number and easier to apply. There were two “waves” of reducing the regulatory burden:

- In 1999 – 2000, on the basis of a decision of the Council of Ministers, the government reported that 44 out of 400 regimes were removed or facilitated;
- In 2003 – 2004, on the basis of another decision of the Council of Ministers, the government sought to remove 75 regimes and ease the application of 117 out of 360 regimes.

Necessary as it was, that process per se failed to bring about tangible reduction of the corruption pressure in the regulation of business activities because it did not address the main problem, which was the procedure, methods and mechanisms of applying the regimes. **The positive anti-corruption effect of those measures could be seen rather in raising the awareness of the civil society and the business community of the issue, which enabled them to increase their pressure for its further effective resolving.** A positive change in that respect was also the concentration of responsibilities for the implementation of the regulatory reform into the Ministry of the Economy by including the Agency for Small and Medium-sized Enterprises in its structure. That led to a more pronounced political commitment to the completion of the ongoing reforms. Bulgaria’s commitment to EU accession calls for continuous introduction of new administrative regimes in the coming years and the main role of the national government in that connection is to ensure their most efficient and corruption-free implementation.

As early as 2001, in its Corruption Assessment Report *Coalition 2000* proposed that new licensing and permit regimes be introduced only by law that would provide clear regulations on their implementation. The adoption of the *Law on Limiting Administrative Regulation and the Administrative Control on Economic Operations* and the publishing of *Instructions* on its implementation adopted by the public-private Council for Economic Growth are undoubtedly a step forward in this respect. In order to fully achieve the anti-corruption potential of the law, further measures are needed over an extensive period of time:

- Better matching of these measures with the public administration reforms, the introduction of one-stop-shops and the electronic provision of public services;
- Effective involvement of local authorities whose role in the interaction with businesses will continuously grow in the context of the country’s upcoming accession to the EU;
- Enhancement of the coordinating role of a single institution in this process and pooling together of the reform information and resources. This should not be perceived as exclusion of other government institutions at the central and local level from the process;

- Dissemination of information and clarifications on the *Instructions* on the implementation of the *Limiting Administrative Regulation and the Administrative Control on Economic Operations* among businesses, ministries, local governments and the judiciary. Thus a common understanding will develop on the need for reduction of the regulatory burden which stakeholders could seek to uphold through the judiciary in future.

No tangible positive effect from the measures undertaken in 2004 can be expected before 2006 or 2007 but the success of the implementation of the *Limiting Administrative Regulation and the Administrative Control on Economic Operations* and other measures to improve the business environment will warrant sustainable reduction of the hidden economy and corruption.

TABLE 12. IMPLEMENTATION OF THE COUNCIL OF MINISTER'S DECISION (CMD) 392/2002 FOR ELIMINATION AND/OR EASING OF REGULATORY REGIMES, JANUARY 2005

Regimes, Included in CMD 392/07.06.2002	Total		Licensing Regimes		Permit Regimes		Registration Regimes	
	360		53		260		47	
Recommendation	To be Preserved	For Elimination or Easing	For Elimination	For Easing	For Elimination	For Easing	For Elimination	For Easing
	168	192	6	29	55	79	14	9
Implemented		159	4	24	46	69	10	6
Not Implemented		33	2	5	9	10	4	3
Implementation Rate		83 %	67 %	83 %	84 %	87 %	71 %	67 %

Source: Ministry of Economy

The Business' Opinion on the Application of Regulatory Regimes in Bulgaria

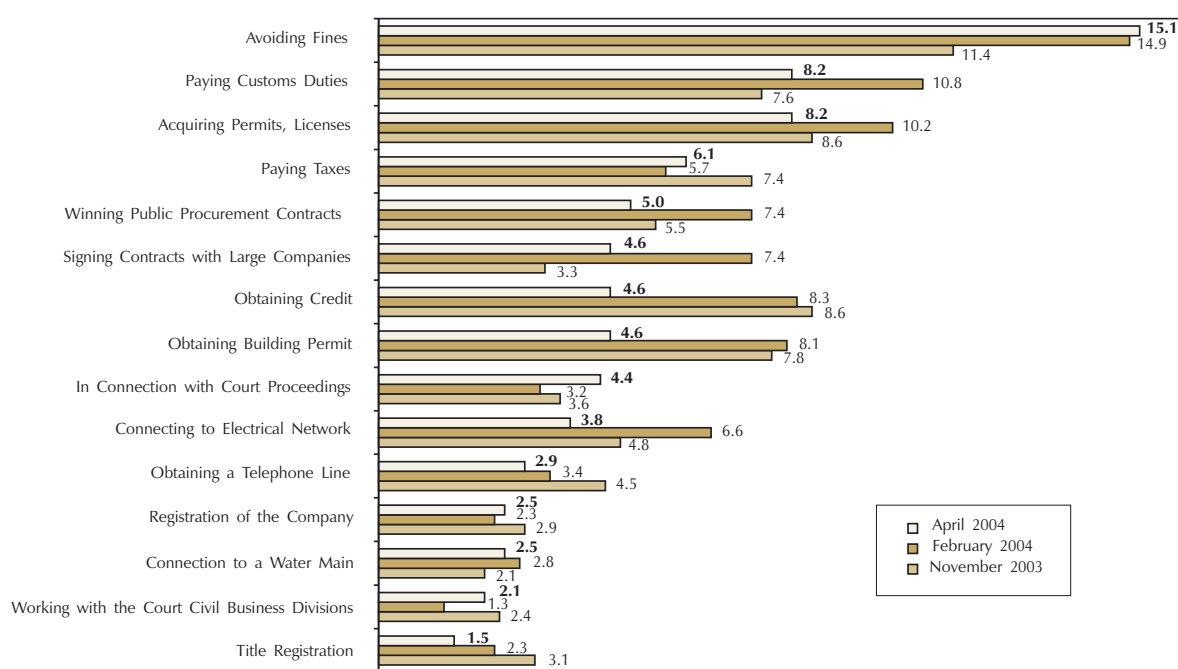
- Six regimes create most difficulties for businesses: the sanitary permit to set facilities into operation issued by the sanitary authorities; the registration of commercial facilities; the permit to build; the permit to use constructed facilities; the permit to set facilities into operation issued by the National Veterinary Control Service; and the permit to transport passengers and freight by road;
- Companies are much more likely to use the assistance of external consulting companies which deal with the issuing and obtaining of administrative documents when the issuance procedure is cumbersome and takes a long time. Such are, for instance, the registration of commercial facilities, the permit to build and the permit to use constructed facilities;

- Respondents point to three major problems when they apply for obtaining administrative permits: the duration of the procedure; the large number of documents to be presented and requirements to be met, and the requirement to present documents which have already been submitted to public registries.

Source: Ministry of the Economy, Vitosha Research

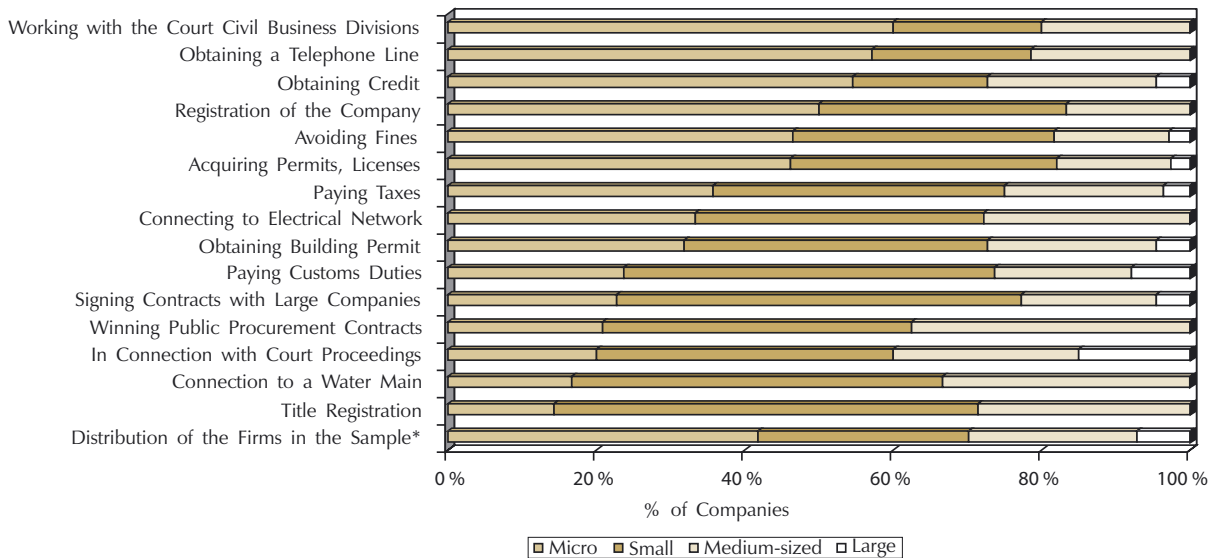
Generally, the public-private actions undertaken for the last six years to reduce the hidden economy and the corruption pressure it generates have been quite successful, **bringing its share from about one-third of GDP to approximately one-quarter**. Still, its size is substantial for a developed market economy. A **risk factor** for the sustainability of the results achieved **is the continued open and strong corruption impact of the criminal economy** – the use of illegally generated profits to ensure competitive advantages in the official business life. As a result of the long existence of considerable percentage of hidden and unregulated business activities, a kind of **a nucleus of the hidden economy** has developed, in which **businesses continuously violate the official laws**. Some 10 to 15 % of businesses pay bribes to avoid fines for a violation they have already committed. One of the most widely used instruments to end the corruption pressure exercised by such nuclei of the hidden economy is the amnesty:

CHART 16. SHARE OF COMPANIES, WHICH MADE INFORMAL PAYMENTS FOR THE FOLLOWING (%)



Source: Corruption Monitoring System (CMS) of Coalition 2000

CHART 17. RELATIVE BURDEN OF CORRUPTION PAYMENTS FOR SERVICES BY COMPANY SIZE**



Source: Corruption Monitoring System (CMS) of Coalition 2000

Note: *The last row of the chart shows companies' distribution by size in the sample – the rows with higher concentration of companies of the respective size show, which are the most burdensome corruption problems for them;

**Companies are: micro (up to 10 employees), small (11-50 employees), medium (51 – 250 employees) and large (over 250 employees)

- A number of partial amnesties were applied in Bulgaria prior to 2005. They were conducted without any clear rules and yielded to the corruption pressure of amnestees without levying any penalties for past violations nor achieving guarantees for sustainable change in their attitude in the future. For instance, before the local elections in the autumn of 2003, municipal councils applied amnesties to illegal construction works without imposing any penalties or guarantess for the reduction of illegal construction works in future;
- Such public demonstrations of pardoning violations without any penalty, tax or at least attempted reform create further incentives to violate the existing rules in the future and erodes the public confidence in the democratic institutions.

As the experience of many developed nations shows, the amnesty can be effective only when it is accompanied by serious action and political commitment to substantially improve compliance after its application. Otherwise the amnesty would only nourish the sense of impunity and institutionalize corruption.

4.2. Corruption, Smuggling, and Customs Reform

Already in the earliest corruption surveys of *Coalition 2000* in 1997, the customs administration and customs officers were identified as the least transparent institution and the most corrupt officials respectively. There is hardly any other national institution that is subjected to such a high corruption pressure. The main prerequisite is the open nature of the Bulgarian economy. Some 60 to 70 percent of the national income cross the national borders either as exports or imports. From the very beginning of the Bulgarian transition to market economy, its borders were turned into a major mechanism for redistribution of national wealth, comparable in magnitude only to the privatization and restitution processes. Bulgarian customs had to reform from a Soviet type administration controlling centrally planned imports and exports into an institution operating under market conditions and uncertainty. Its restructuring and modernization have been carried out in the context of permanent political and economic crises, endemic expansion of criminal activities within the country and years-long corruption pressure on its borders due to the war and the U.N. embargo on former Yugoslavia.

As a result, corruption in its numerous and diverse forms had turned into an essential part of the sub-culture of the customs administration, affecting all its levels. The forms of corrupt behavior ranged from small bribes from the hundreds of shuttle traders to smuggling of oil tankers protected at the highest political level. During most of the 1990s, at least 50 % of the turnover of almost any market for highly liquid goods (e.g. cigarettes, alcohol, coffee, oil, sugar, fruit, vegetables, electronic household equipment, automobile spare parts, etc.) was supplied through customs violations (e.g. smuggling, tax and customs duties evasion, etc.)

In the late 1990's, **public pressure and the gradual normalization of the economy led to a decrease of corruption in the customs administration.** The main prerequisites for the decline can be attributed to:

- The political stabilization of 1997 and 1998 enabled the government to crack down on the largest semi-criminal structures in the economy (mostly bogus insurance companies). Some large smuggling channels for goods, which were related to those structures, ceased to exist;
- The normalization of the country's political system led to the elimination of some of the opportunities for politicians at the local and central level to protect customs fraud schemes;
- The lifting of the oil embargo and related sanctions against former Yugoslavia and, later on, the stabilization of the West Balkan countries broke off the huge flows of embargoed goods supplied by Bulgarian criminal organizations and reduced the influence of international criminal structures on Bulgarian border institutions;
- With the end of the financial crisis in the Bulgarian economy, new stable medium-sized and big Bulgarian companies emerged which regularly paid customs duties and taxes. Thus the customs administration could focus its attention on higher-risk companies which accounted for the greatest number of customs violations;

- As the privatisation process advanced, the practice of state-owned enterprises not to pay their import duties because of alleged difficulties in their financial positions was gradually phased out. That substantially increased the revenues of the customs administration;
- The entry of multinationals on the Bulgarian market and the increase of their market share squeezed out hidden economy and greatly reduced the sales of goods in violation of the Bulgarian customs and tax regulations. Typical examples were the imports of mass consumer goods like alcohol, coffee, detergents, etc.;
- The penetration of the multinationals further into transport, forwarding and especially in trade created additional obstacles to the functioning of established channels for “grey” imports. According to *Coalition 2000* estimates, the entry of internationally established retail chains like Metro and Billa at the end of the 1990’s reduced “grey” imports by as much as 50 % in the cities where those chains opened their stores.

Simultaneously to the improving political and economic environment, **the customs administration undertook a number of steps to lower the corruption pressure on customs officers and to reduce the opportunities for customs violations.** The most important ones are as follows:

- After years of procrastination and delays, 2000 saw the launch of the Bulgarian Integrated Customs Information System (BICIS). Thus the whole process of import, export and transit of goods became transparent in real time. The introduction of BICIS enabled the management of the customs administration for the first time to exercise centralized control on customs operations; to introduce risk assessment of goods and companies; to evaluate the performance of each individual customs officer; and to use many other analytical tools, which greatly reduced the preconditions for customs violations;
- In 2001, the Ministry of Finance signed a contract with the British company Crown Agents to provide expert assistance in the reform of the Bulgarian customs administration. Regardless of the critical remarks on the activities of the British company, Crown Agents proved as a whole to be a genuine catalyst for improved operation of the Bulgarian customs;
- When mobile customs groups were established in 2002, the customs administration got a tool to exercise quick on-site operational control. Coupled with BICIS, those measures eliminated the opportunities for regional customs authorities to hide unregulated activities and customs violations. Due to the mixed composition of the mobile groups (a representative of the National Squad for Combating Organized Crime, a representative of Crown Agents and two representatives of the Customs Intelligence and Investigation Service), they turned into an effective independent control tool. As a result, only an year after their introduction, customs groups achieved tangible reduction in the

use of under-priced declarations and false tariff items by imports, while the shuttle trade was practically eliminated;

- After the opening of the EU accession negotiations, the customs administration started regular exchange of information with their counterparts in Western Europe. Thus the value of exported (respectively imported) goods from the European Union could be compared to the value declared by the importer to (respectively the exporter from) Bulgaria. The number of enterprises importing at lower than actual prices (or exporting at overpriced levels) has been strongly reduced for the last two or three years.

Notwithstanding the considerable improvement in the work of the customs administration, the level of corrupt practices remains high.

Moreover, the institution's human, technological, organizational and financial resources are underutilized. The most serious critical remarks in this respect are as follows:

- The customs administration used higher than expected revenues reported in 2003 and 2004 as an argument for offsetting the public pressure for anti-corruption reforms within the organization. However, the way customs revenues are calculated and presented does not allow separating the effects of improved efficiency of the customs administration from increases in the country's imports. The main revenue item of Bulgarian customs is the valued added tax (VAT). The increased growth rates of imports in 2003 and 2004 automatically resulted in a proportionate increase in VAT revenues. Imports grew so significantly due to the rapid expansion of bank lending which rose by 50 % in 2004 alone. According to market surveys, consumption growth rates are higher than the growth of imports registered by the customs. This gives grounds to assume that the import at lower than actual prices continues for some groups of goods, which results in budget losses due to lower VAT revenues. Thus revenue growth has proven to be a convenient environment for disguising "grey" imports in some groups of goods;
- The accelerated growth of consumer goods imports has created new opportunities for corrupt practices in the customs. Unlike the late 1990's when customs fraud was based on gross law violations, the period from 2003 to 2005 has been characterized by "soft" forms of corruption, in which a customs officer acts as a "consultant" and/or intermediary of businesses circumventing the law. These operations rarely constitute law offences but nevertheless customs officials provide assistance to businesses to evade paying the full amount customs duties;
- Alongside "soft" corruption forms, the system of graft to speed up customs procedures continues to exist. Surveys among transporting, forwarding and trading companies reveal that the spread of graft has retained its level of the 1990's;

- The critics of the current management of the customs administration believe that participation in “soft” corruption forms and small graft have grown into a peculiar system of rewarding loyalty to the system;
- Another serious problem is the low level of activity of the Inspectorate as the internal body within the Customs Agency entitled to investigate corruption. Independent internal investigation is strongly restricted by the lack of autonomy of the Inspectorate and its strong dependence on the management of the customs;
- In 2004, the Mol has undertaken a series of raids to detect VAT siphoning schemes through fictitious exports. Although hundreds of participants related to those schemes have been identified, the response of the customs administration has been sluggish and there is no information available as to investigation or punishment of customs officers. And the losses due to fictitious exports are substantial and increasing. Studies of *Coalition 2000* using the “mirror statistics” method prove that the country loses several hundred million USD annually from such schemes. Assessments of the Ministry of Finance have revealed similar results for the last five years. Though a host of organizations have repeatedly recommended enhancing the interaction between the customs and the tax administration and both institutions are situated within the Ministry of Finance the exchange of information and joint action between them is inadequate. In this respect there are numerous cases in which the referral to tax or customs secrecy regulations has prevented the investigation of fictitious exports schemes for VAT siphoning in considerable amounts.

TABLE 13. MIRROR STATISTICS OF COMMERCIAL FLOWS BETWEEN BULGARIA AND GREECE
(2000 – 2003) (THOUSANDS OF USD)

Year	Export from BG	Import into GR	Difference	Import into BG	Export from GR	Difference
2000	376 977	396 892	-19 915	317 897	451 169	-133 272
2001	448 588	422 213	26 375	411 588	572 139	-160 551
2002	521 162	308 889	212 273	475 708	553 894	-78 186
2003	772 925	415 852	357 073	714 899	825 002	-110 104

Note: (1) Exports are FOB, (2) imports are CIF

Source: National Statistical Institute

4.3. Privatization and Anti-Corruption

Right from its outset, **the privatization process turned into one of the most problematic corruption spheres due to the concentration of a multitude of private and public interests in it.** The historically unprecedented scope and size of the divested assets, the lack of administrative and political experience, the absence of adequate legal framework and judicial control and the long delays in the process created unlimited opportunities for corruption and abuse in the privatization process. Not surprisingly privatization featured on top of

the Anti-corruption Action Plan (1998) of *Coalition 2000* in the economic sphere.

As a whole, the privatization process in Bulgaria over the period from 1998 to 2005 has been characterized by lack of transparency and all too frequent and numerous changes of rules. It was not until very late in the process in 2004 and 2005 that a tendency emerged to improve the accountability of privatization and to reduce the potential for abuse and corruption. The successive changes of the privatisation model built on the proposals of *Coalition 2000* set out in its regular Corruption Assessment Reports since 1999, i.e. more active use of open privatisation procedures, transposition of the successful model of the privatisation process in the banking sector, etc. Still, the privatisation process continued to involve businesses that had gained economic strength through previous corrupt practices. Thus privatisation turned into a symbol of large-scale political corruption and created lasting mistrust among the general public in the democratic institutions and the rule of law.

Many corruption practices in the privatization process persisted in spite of the continuous legislative and administrative reforms in that sphere. A key element of the anti-corruption reform in privatization, which was not appreciated for quite a long time, is the understanding that corruption could be overcome and the privatization process could become efficient on the basis of partial changes rather than a system of interrelated rules:

- Many believed that the implementation of the mass (voucher) privatisation process would lead to fast and fair distribution of assets and the private interest of the numerous owners would subsequently inhibit possible abuse and corruption. The lack of corporate culture and functioning capital market enabled the transfer, often through corruption, of assets divested in the voucher privatisation to a handful of related parties. The employees-management buy-out schemes, which were applied as the preferred privatization model later on, brought about similar problems and outcomes;
- The most massive privatisation of assets from 1997 to 1999 was based on the presumption that the reduction of public ownership would automatically limit corruption opportunities. Market mechanisms were believed to be capable of automatically providing for the efficient functioning of privatised enterprises, regardless of who their new owners were. The emphasis on speed in the privatization process at that time led to the choice of “negotiations with potential buyers” as the most widely used privatisation technique. The **lack of transparency in privatisation methods**, coupled with the **institutional fragmentation** of responsibilities between the Privatisation Agency and line ministries, generated numerous opportunities for corruption. It was exactly the prevailing public opinion that the government’s privatization policy was corrupt that led to the change of government in the general elections held in the summer of 2001;

- The presumption that the corruption problems in privatisation could be resolved exclusively through changes to the legal framework has caused the long stagnation in the large-scale privatisation from 2001 to 2005. One of the major warnings of *Coalition 2000* in that respect was that **interests related to the criminal economy could continue for quite some time to control legitimate business and public policies due to the economic power and the corruption infrastructure that they had established before**. The extensive and controversial interference of the judiciary in the privatisation of the Bulgarian Telecommunication Company and Bulgartabac Holding was among the most telling examples of the influence of political corruption in the country. The deals were blocked for more than two years and were ultimately discredited; it is hardly possible to gauge precisely the losses and missed opportunities for the economy.

The lessons learned in the privatization process are still relevant with a view to the implementation of large infrastructure projects and the granting of concessions on infrastructure facilities in the near future. Against the background of the increasing transfer of public services to the private sector on an international scale, **the establishment of working and transparent models of public-private partnerships in Bulgaria should turn into a key task in the modernisation of the public administration.**

The Law on Privatisation and Post-privatisation Control adopted in early 2002 reflected a number of recommendations of *Coalition 2000* on reducing the corruption potential in the privatisation process. The negotiations with potential buyers were eliminated as a privatization technique and priority was given to public tenders and the stock exchange. The efforts made by the government to apply the law to the small and medium-sized privatisation and the substantial improvement of the information activities of the Privatisation Agency in 2003 and 2004 led to **tangible positive fiscal effects and greatly reduced the corruption pressure on the Agency**. The small and medium-sized privatization process was almost completed at the central government level by the end of 2004.

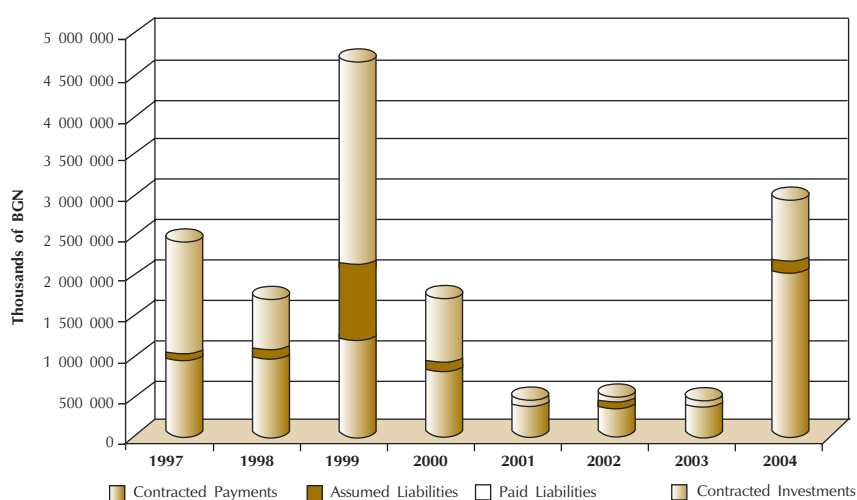
Progress of the Privatisation Process in Bulgaria

At the end of August 2004, 54.37 % of the fixed assets of state-owned enterprises and 82.33 % of the assets subject to privatisation were privatised. With 2,878 enterprises already privatised there are only 95 enterprises with majority state ownership left for privatization. Furthermore, 3,681 residual state minority shareholdings have been sold off by the end of 2004.

Source: Privatisation Agency

Unlike the case with small and medium-sized privatisation, **the implementation of the *Law on Privatisation and Post-privatisation Control* in the large-scale privatisation deals was controversial and full of**

CHART 18. FINANCIAL RESULTS OF PRIVATIZATION DEALS (1997 - 2004)
(THOUSANDS OF BGN IN ALL POSSIBLE MEANS OF PAYMENT*)



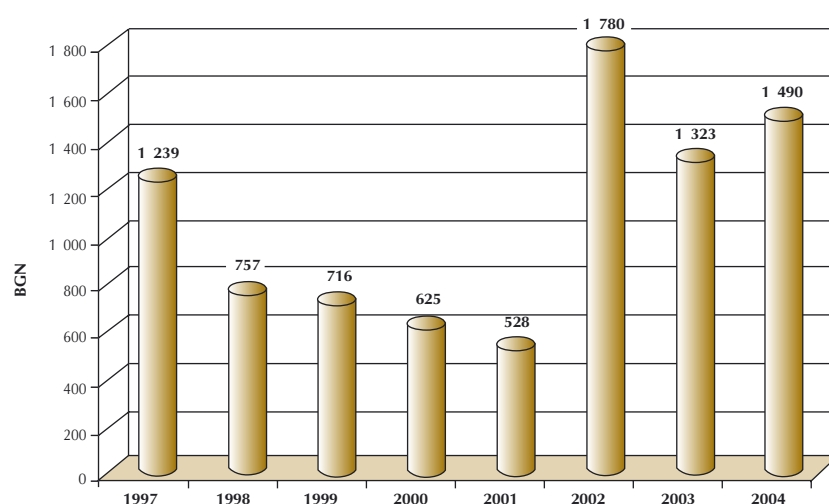
*According to Bulgarian privatization legislation payments can be made both in cash as well as in a number of other non-monetary instruments
Source: Privatization Agency

TABLE 14. PRIVATIZATION METHODS (1993 - 2004) (NUMBER)

	Tender	Competition	Direct Negotiation	Stock Exchange	Central Tender
Deals for Stakes and Shares of Companies	320	1 093	1 075	64	330
Deals for Separate Company Assets	310	453	1 541	-	-

Source: Privatization Agency

CHART 19. AVERAGE CONTRACTED PAYMENT PER PRIVATIZATION SALE (1997 - 2004) (BGN IN ALL POSSIBLE MEANS OF PAYMENT)



Source: Privatization Agency

changes and delays. The results of the involvement of the administrative prosecution and the courts in the privatisation of the Bulgarian telecom operator and Bulgartabac Holding generated reasonable doubts as to the independence of the judiciary and the existence of strong political corruption pressure on the system. The attempts of the executive power at amending the legislation in order to eliminate the judicial supervision of the privatisation process were blocked by the Constitutional Court in the beginning of 2003. The political confrontation between the executive power and the judiciary discredited the privatization deals, generated legal uncertainty and delayed the large-scale privatisation by two to three years. The *Draft Law on amending and supplementing the Law on Privatisation and Post-privatisation Control* submitted by the government to Parliament in June 2004 was the eleventh consecutive change to the law and provides for reduction of checks and balances in the privatisation process. The bill proposes that most of the powers of the National Assembly with regards to privatization be transferred to the Council of Ministers, the Supervisory Boards of the Privatisation Agency and the Post-privatisation Control Agency be eliminated and some powers of the Privatisation Agency be handed over back to line ministries. **The frequent attempts at using legislative and administrative mechanisms to resolve current political problems and/or disagreements in the privatisation process enhance the legal uncertainty of the process and**

make its objective assessment much more difficult. The subsequent politicizing of the public debate conveniently conceals corrupt privatization and increases the public mistrust in the anti-corruption capability of government institutions.

It is still difficult to assess objectively the effects from the establishment of the Post-privatization Control Agency (PCA). The main positive change is the reduction of institutional and responsibility mishmash in the post-privatization process, which should facilitate public oversight. Concerns that corruption in the privatization process would shift to the Agency proved wrong. However, this is most likely the result of the slow progress in the work of the Agency. It was not until the beginning of 2004 that the process of institutional establishment of the Post-privatization Agency was completed by pooling the majority of privatization dossiers into a single registry. Although the public registry is a step towards greater transparency in the post-privatization control at the level of individual transactions, the data is hard to process and prevents the establishment of aggregate indicators. This inhibits the assessment of the performance and efficiency of PCA. There also is no sufficient and accessible public information on the reports produced by the Agency.

As *Coalition 2000* has already suggested in earlier Corruption Assessment Reports one could hardly expect any substantial fiscal effect of the Agency's activities:

- Voluntary payments of penalties levied by PCA on defaults on privatisation agreements are negligible and hardly cover the annual budget of the institution. The bulk of outstanding payment obligations under privatisation agreements are concentrated in few notorious deals with lots of legal complications and numerous shifts of title after the original privatisation contract;
- It is unlikely for the Agency to recover due receivables or penalties taking into consideration the overall bad shape of the judiciary, the expiration of statutes of limitation in most of the cases and the short notice for preparing cases before court. Experience has proven that most of the cases will take two to four years to complete and this time is sufficient to decapitalize the assets involved in the litigation.

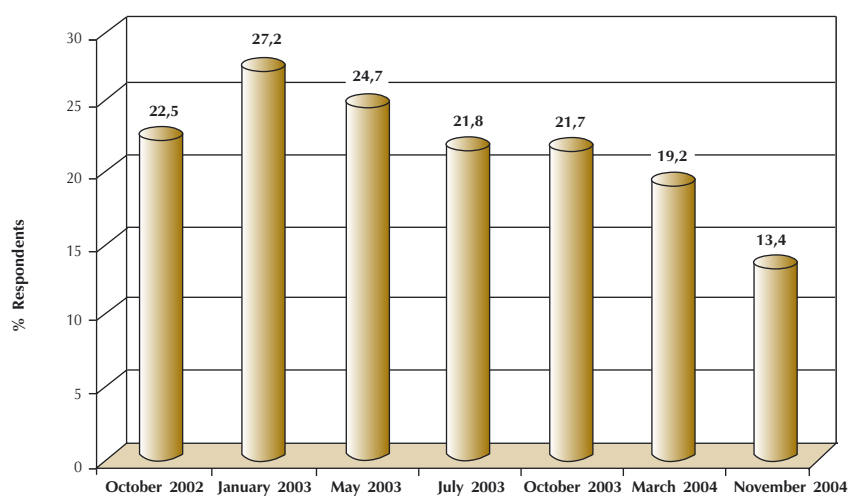
At the same time, the fears of many investors that with the introduction of a unified PCA a number of privatisation deals would be cancelled, the investment climate would deteriorate and corruption payments would increase to avoid penalties proved unsubstantiated. By the end of 2004, the Post-privatisation Agency had exercised its right to demand cancellation of privatisation agreements only in five cases. Instead, the Agency opts for cash penalties and/or bankruptcy proceedings as the major sanctioning mechanisms.

In the context of the limited executive powers of the Post-privatisation Agency, post-privatisation control remains an area which is relatively free of strong corruption pressure. As the latest government *Draft*

Law on amending and supplementing the Law on Privatisation and Post-privatisation Control envisages greater powers of the Agency to supervise big privatisation deals and possible reinforcement of its sanctioning capability, the public, economic and political pressure on its operations is expected to grow. In this connection, **adequate action is needed to prevent possible occurrence of corruption:**

- the Agency has to receive adequate financing and staffing;

CHART 20. SPREAD OF CORRUPTION IN THE PRIVATIZATION AGENCY ACCORDING TO POPULATION SURVEYS* (%)



* % of respondents saying that "all or almost all" in the Privatization Agency are involved in corruption
Source: Corruption Monitoring System (CMS) of Coalition 2000

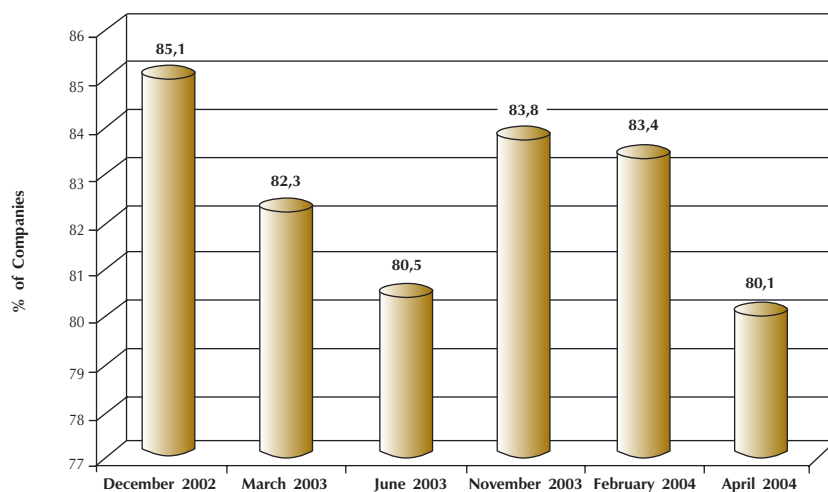
- the Agency has to improve its interaction with the prosecutors' offices, the Mol and the State Receivables Collection Agency to ensure maximum protection of the public interest in the numerous court cases;
- the performance of the public registry for post-privatisation control has to be improved to allow for aggregation of data by various indicators.

Performance of the Post-privatisation Control Agency

As of 30 September 2004, the Agency carried out the post-privatisation control on 7,006 privatisation agreements. By 443 deals there were outstanding payments of the contracted price. By 218 deals there were systemic defaults on the re-scheduled portion of the purchase price.

Over the period from 1 January 2004 to 1 September 2004, the total amount of penalties levied by the APC for defaults on investment programs, employment plans and other contractual obligations equalled BGN

CHART 21. DEGREE OF "ACCEPTANCE OF BRIBES BY OFFICIALS AND POLITICIANS DECIDING ON PRIVATIZATION TENDERS"* (BUSINESS SECTOR) (%)



* % of companies indicating that the degree of bribe taking in decisions on privatization tenders is "high"
Source: Corruption Monitoring System (CMS) of Coalition 2000

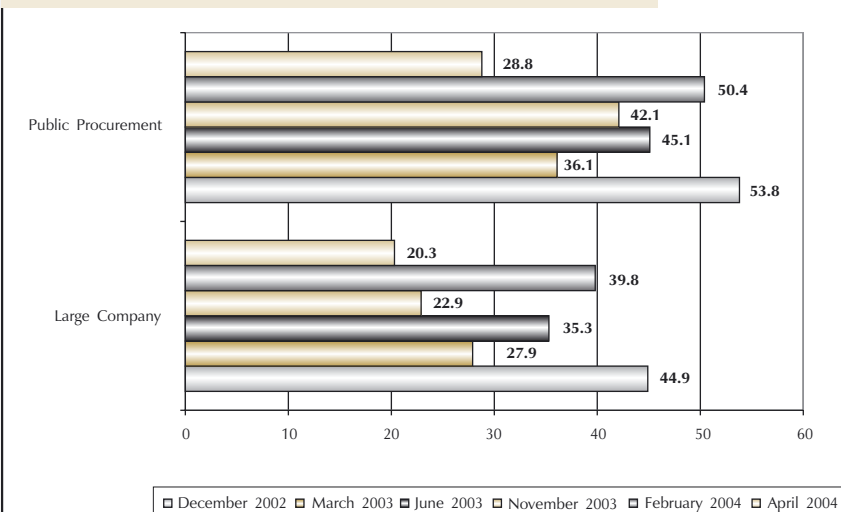
142,714,822. Of this only BGN 183,413 were paid out voluntarily within the prescribed time before the Agency undertook remedial court action. As of 30 September 2004, the Agency was a party to 832 court cases. The financial obligations involved in these cases amounted to BGN 398,498,610.96, USD 107,245,538.60 and EUR 1,941,186.64.

Source: Post-privatisation Control Agency

4.4. Corruption and Public Procurement

Public procurement is a major channel for allocation of public resources to the private sector. Internationally and historically, it is one of the spheres that are most susceptible to corruption. **From 1998 to 2005, corruption in the public procurement in Bulgaria retained its high levels with one out of two or three contracts being accompanied by graft payments.** The corruption price for awarding public procurement typically ranges from 3 to 10 % of the contract price. In 2004, bribes tended to increase to 11-20 %. The Public Procurement Register shows that there has been a growing tendency for the last five years to opt for direct negotiations in awarding public procurement contracts. This form of contracting is the least transparent one and creates the biggest opportunities for violations and abuse, including corruption.

CHART 22. SHARE OF COMPANIES, WHICH MADE UNOFFICIAL PAYMENTS IN ORDER TO OBTAIN PUBLIC PROCUREMENT OR LARGE COMPANY CONTRACT (%)

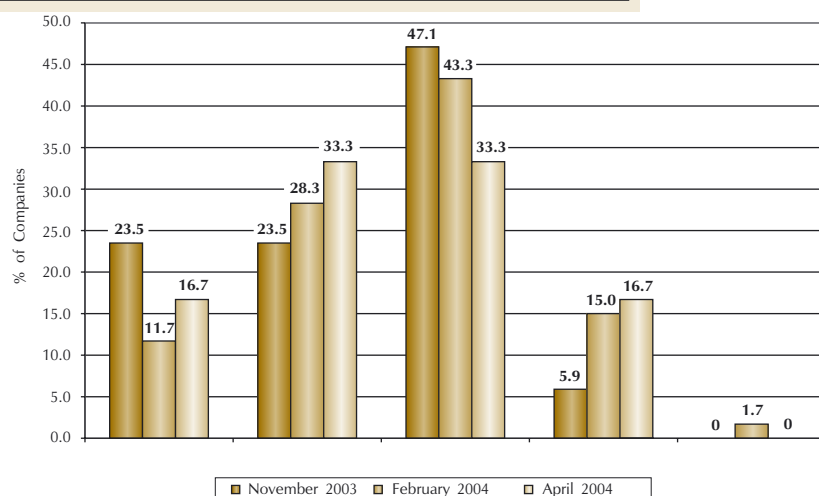


Source: Corruption Monitoring System (CMS) of Coalition 2000

Base: December 2002: N = 147 (Contract with Large Company); N = 155 (Public Procurement); March 2003: N = 98 (Contract with Large Company); N = 91 (Public Procurement); June 2003: N = 136 (Contract with Large Company); N = 133 (Public Procurement); November 2003: N = 140 (Contract with large company); N = 121 (Public procurement); February 2004: N = 123 (Contract with large company); N = 119 (Public procurement); April 2004: N = 133 (Contract with large company); N = 125 (Public procurement)

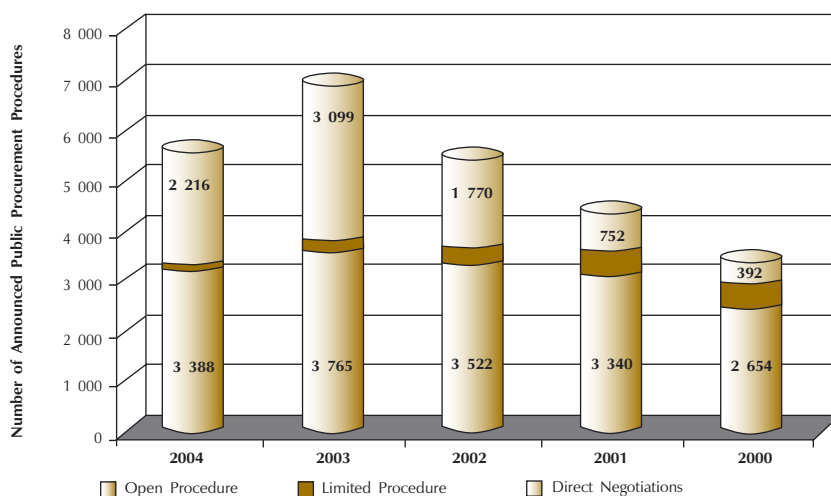
The National Audit Office (NAO) reports that public procurement is particularly vulnerable to corruption:

- The number of reports on violations of the Law on Public Procurement sent by NAO to the Minister of Public Administration and the Minister of Finance increased from 29 in 2003 to 93 in 2004. That was the result of the improved expertise and the more focused efforts of NAO in public procurement but also of the actual increase of incidents of violation of the Law on Public Procurement;
- The number of NAO statements on violations in public procurement contracting reveals a **stable upward trend** (2000 – 33; 2001 – 235; 2002 – 509; June 2003 - 404). Over the period from 2000 to 2003, the typical violations were using the direct negotiations method of contracting without having valid legal grounds

CHART 23. SIZE OF UNOFFICIAL PAYMENTS MADE BY COMPANIES IN PUBLIC PROCUREMENT BIDS, AS A SHARE OF THE CONTRACT AMOUNT

Source: Corruption Monitoring System (CMS) of Coalition 2000

Base: Companies, which paid in order to obtain public procurement contracts (November 2003: N=51; February 2004: N=60; April 2004: N=36)

CHART 24. TYPES OF PUBLIC PROCUREMENT PROCEDURES USED BY THE CONTRACTING AUTHORITIES (2000 – 2004)

Source: Public Procurement Register

TABLE 15. RESULTS OF PUBLIC PROCUREMENT AUDITS CARRIED OUT BY THE PUBLIC INTERNAL FINANCIAL CONTROL AGENCY IN BULGARIA (2002 – 2003)

	2002	2003
Number of Audited Procurement Contracts	5 547	6 069
Number of Procedural Violations (% of Audited Contracts)	1 069 (19 %)	1 941 (32 %)
Number of Contracts Signed without Applying Public Procurement Rules though There Were Grounds for It	778	820

Source: Public Internal Financial Control Agency

to do so, as well as awarding of contracts at prices lower than the bid; 914 contracts were awarded without any procedure at all.

Similar conclusions have been drawn by the other specialized controlling body under the *Law on Public Procurement*, i.e. the Public Internal Financial Control Agency (PIFCA). From 2002 to 2004, the number of violations of the statutory procedures in awarding public procurement contracts and the number of failures to hold such procedures when the relevant legal grounds existed increased. PIFCA reports indicate that one in three public procurement contract was awarded in violation of the *Law on Public Procurement*, involving hundreds of millions of Bulgarian Leva.

The massive and widespread violation of the *Law on Public Procurement* and even the total neglect for its provisions has clearly shown that:

- the current legislation fails to provide adequate framework for transparent and efficient public procurement contracting and does not prevent effectively the use of corrupt practices for misappropriation of public resources;
- the control mechanisms of the NAO and PIFCA are inadequate and/or insufficient to ensure acceptable levels of compliance.

The National Audit Office also shares the opinion that the penalty mechanism for public procurement contracting is not effective and efficient enough

TABLE 16. THRESHOLDS FOR APPLYING SMALL SCALE PUBLIC PROCUREMENT RULES* PRIOR TO AND POST THE NEW PUBLIC PROCUREMENT LAW OF 01.10.2004

Type of Procedure	After 01.10.2004		
	Building/ Construction	Delivery of Goods	Services
Open Competition or Direct Negotiations after Invitation** (up to BGN)	1 800 000	150 000	90 000
Direct Negotiations after Obtaining at least 3 Price Offers (up to BGN)	100 000	30 000	20 000
Direct Negotiations (No Public Procurement Procedures Apply) (up to BGN)	45 000	15 000	10 000
	Before 01.10.2004		
Open Competition (up to BGN)	600 000	50 000	30 000
Limited Competition (up to BGN)	100 000	20 000	15 000
Direct Negotiations (up to BGN)	30 000	10 000	10 000

Note: * Public procurement below certain thresholds, specified in the Public Procurement Law, is carried out under the Regulation on Awarding Small Scale Public Procurement, in which much lighter rules apply.

** In terms of transparency and corruption potential between these two extremes lie two other options: public tenders and commodity exchange deals.

Source: APIS

because the increased incidence of penalties does not lead to reduction of violations.

It was not until 2003 and 2004 that the government undertook legislative and administrative measures to reduce the corruption potential of the public procurement system:

- 2004 saw the adoption of a new *Law on Public Procurement* harmonized with the *acquis communautaire* of the European Union in this field;
- A *Draft Law on the Public Internal Financial Control* has been submitted to Parliament in order to achieve improvement of financial control and harmonization with EU requirements;
- Continuous training at the National Audit Office and PIFCA within the framework of international programs, has strengthened the controlling capacity of the two institutions.

TABLE 17. PUBLIC PROCUREMENT CONTRACTS BY PRICE RANGE (2000 – 2004)

	2004*	2003	2002	2001	2000
Price	number	number	number	number	number
Up to 30 000 BGN	1 223	1 377	1 257	993	853
From 30 000 to 50 000 BGN	438	512	505	379	286
From 50 000 to 600 000 BGN	1 263	1 636	1 637	1 321	1 101
Above 600 000 BGN	231	382	257	285	198
Total	3 155	3 907	3 656	2 978	2 438

Note: For part of the public procurement contracts of 2004 the new rules of the Public Procurement Law might apply.

Source: Public Procurement Register

The new *Law on Public Procurement* which entered into force on 1 October 2004 is a precondition for enhancing the standards of transparency and accountability and for reducing the opportunities for abuse and corruption in public procurement. However, it cannot be expected to warrant automatic compliance and higher ethical standards on part of civil servants and businesses. It is particularly important to establish good practice for transparent application of the new provisions of the law as early as 2005. There are many

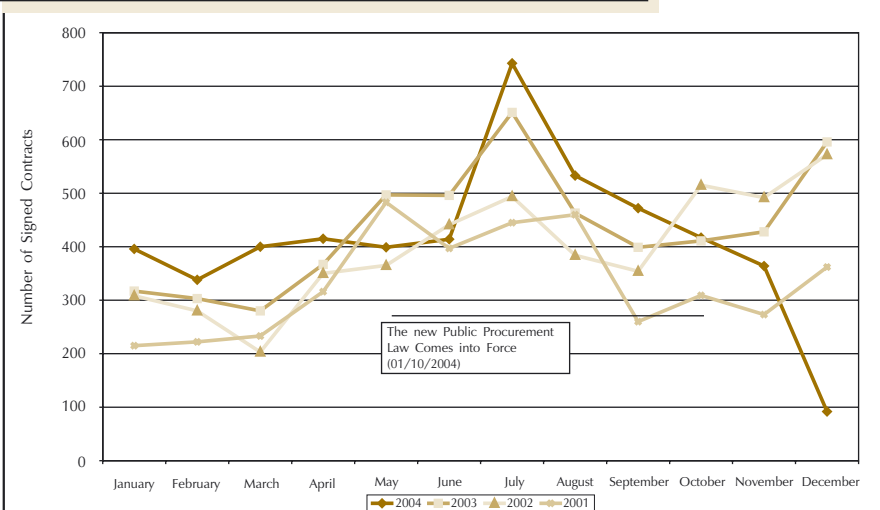
risk factors, which should be closely monitored by the specialized controlling bodies, the civil society and the business community:

- Since the new law has introduced trebling of the minimal thresholds for obligatory application of public procurement procedures as required by the EU, about half of the contracts awarded on the average during the 2000 – 2004 period will be excluded from its scope. Moreover, the softer regime under the *Regulation on Awarding Small Scale Public Procurement*, which would allow direct awarding without any public tender procedure, would apply to about one-third of the contracts. Undoubtedly, the **liberalization of the public procurement regime is a positive step towards reduction of the high transaction costs of negotiations and possible subsequent litigation but it calls for considerable enhancement of the public and specialized control on the process.** An innovative tool for reduction of the corruption pressure resulting from the higher thresholds and the increased discretionary power of the public administration is the introduction of e-markets for small scale public procurement similar to the pilot project implemented at the Ministry of Finance. Adequate improvement is needed also in the quality of the information provided by the Public Procurement Register in order to guarantee higher level of public and media control;
- **Some provisions of the new Law on Public Procurement and the Regulation on Awarding of Small Scale Public Procurement go beyond EU requirements and create opportunities for abuse.** These are, for instance, the requirements of Art. 84, item 1 of the Law and the equivalent Art. 53, para 1, item 1 of the Regulation, which define the conditions for transition from public tendering to direct negotiations of public procurement contracts. “Upgrading” EU requirements in areas which do not require the introduction of any specific local features reasonable doubts emerge as to the

establishment of loopholes for circumvention of good practices. This reinforces the tendency observed for the last five years of an increase in the number of public procurement contracts awarded on the basis of direct negotiations and raises the risk of corruption;

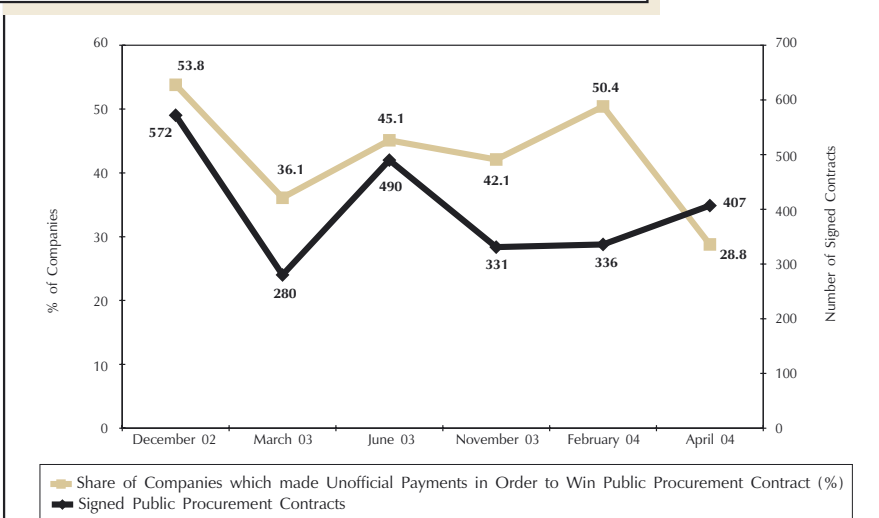
- The texts regulating the Arbitration court to the Agency for Public Procurement are unconstitutional in the opinion of many jurists because they contradict the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* ratified

CHART 25. NUMBER OF PUBLIC PROCUREMENT CONTRACTS BY MONTH (2001 – 2004)



Note: Data as of January 2005.
Source: Public Procurement Register

CHART 26. NUMBER OF SIGNED PUBLIC PROCUREMENT CONTRACTS AND RELATIVE FREQUENCY OF CORRUPTION PAYMENTS MADE BY COMPANIES IN ORDER TO WIN A PROCUREMENT CONTRACT



Source: Public Procurement Register, Corruption Monitoring System (CMS) of Coalition 2000

by Bulgaria in 1962 and the *European Convention on International Commercial Arbitration* ratified in 1964 and Art. 5, para. 4 of the *Constitution of Republic of Bulgaria*. If contested at the Constitutional Court of Bulgaria these texts might be declared unconstitutional thus creating legal uncertainty and opportunities for further changes in public procurement rules, which could lead to corporate pressure for exclusivity and corruption;

- In the case of further amendments to the *Law on Public Procurement* the

government should adopt the principle not to add any provisions on top of what is mandatory under EU *acquis*. This is a way to avoid the lobbying for private vested interests, which usually lead to corruption;

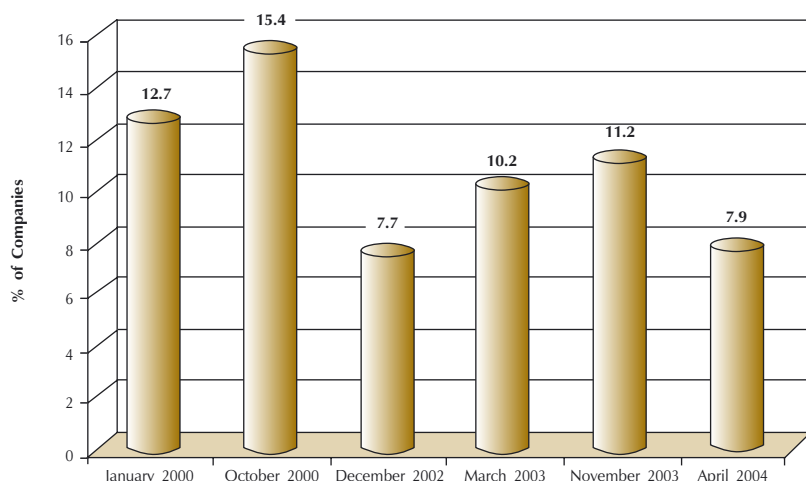
- The rapid institutional establishment of the new Public Procurement Agency (PPA) is a key factor for the promotion of good practices under the new legislation. The six-month' period allowed for the establishment of the Agency between the adoption and the effective entry into force of the Public Procurement Act was a good precondition for success. **The one-off substantial increase of budget expenditures as a result of the spending of the considerable government fiscal surplus accumulated at the end of 2004 and the elections in the summer of 2005 would most likely increase the corruption pressure in public procurement.** This will be the first practical test of the effectiveness of the procedures under the new *Law on Public Procurement*.

The more liberal nature of the new *Law on Public Procurement* implies an improved monitoring and control system of the specialized state bodies, i.e. the National Audit Office and PIFCA. While the institutional capacity of the National Audit Office has been considerably strengthened in recent years, PIFCA still faces substantial changes in its legislative base, which is a potential risk for disturbing the normal operation of the institution. The government has already proposed a *Draft Law on the Public Internal Financial Control*, which aims to improve control on public expenditures, to protect public interests better and to align the national legislation with the EU *acquis communautaire* in this sphere. The draft law provides for much greater powers of PIFCA, which calls for thorough assessment of the risk of possible conflict of interests, abuse and corruption, as well as duplication of powers with other government institutions.

4.5. Corruption and Anti-Corruption in the Private Sector

Bribery is almost as widely spread in the private sector as it is in the public sector of Bulgaria. The abuse of economic or administrative power for personal benefit at the expense of the interests of business owners and customers distorts market forces and mitigates the positive effect of their functioning. These are the corrupt practices related to “kick-back” payments, negative PR journalism, and the disregard for minority shareholders’ rights following the voucher privatization process, etc. The existence of corruption in the private sector worsens the consequences of potential external negative shocks to the economy. Corruption in the private sector is a sign of market immaturity, underdeveloped market infrastructure and passive businesses. If there is strong pressure for better products by well informed and organized customers and representative, independent and authoritative business associations which guarantee and maintain high standards of social corporate responsibility of their members, the room for corrupt transactions in the added value chain is much narrower.

CHART 27. SHARE OF COMPANIES WHICH ‘OFTEN’ LOST BUSINESS DEALS BECAUSE A COMPETITOR HAD PAID A BRIBE (%)



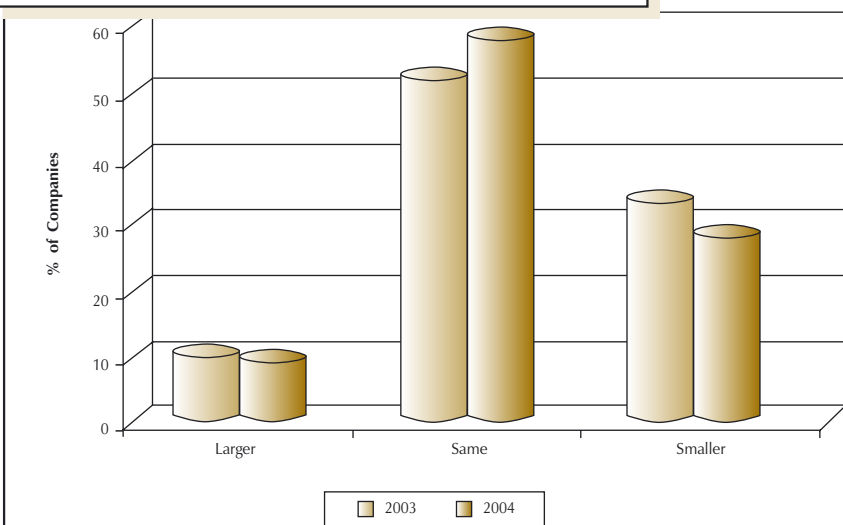
Source: Corruption Monitoring System (CMS) of Coalition 2000

The first half of Bulgaria’s transition (until 1997) was dominated by bogus insurance companies and racketeering, financial fraud (financial “pyramid” schemes and siphoning of banks) and various extortion practices (with regard to prices and/or suppliers). All those parasite practices with considerable negative social and economic effect became possible due to the political instability and institutional weakness of the government and the law enforcement authorities in particular. That led to the emergence of vicious business practices, which prevent the appearance of modern corporate and institutional culture among the population.

During the second half of transition, businesses gradually came “out of the dark” and business relations in the private sector went to normal through the improvement of the overall institutional framework of the market. As the planning horizon of enterprises extended mainly due to the efficient functioning of the currency board arrangement, businesses started recognizing their long-term private interest in the common observance of the rules of good and ethical conduct. Although very slowly and hesitantly, **sectoral organizations and business associations began to change from sheer lobbyists insisting on privileges for individual members or the sector as a whole to self-regulators** (improving the business environment through intolerance to unethical companies).

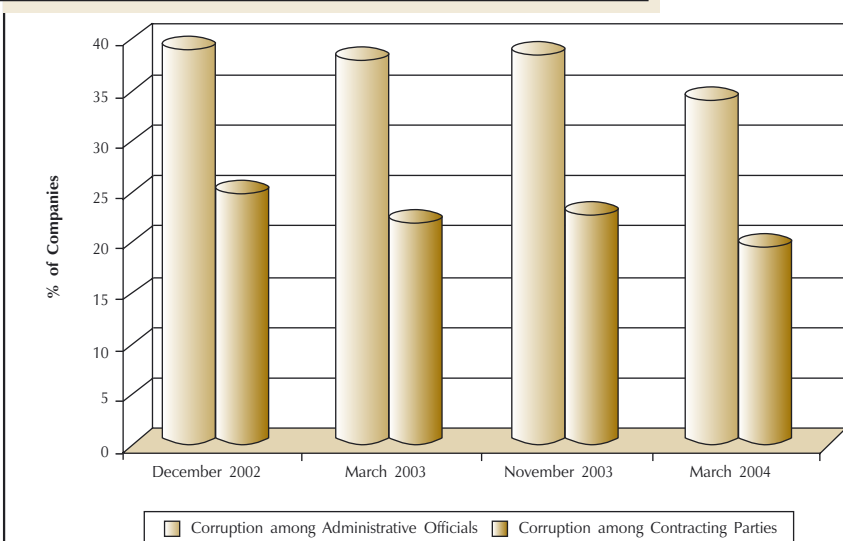
Generally, in 2004, some 60 % of the businesses assessed the spread of corruption as equal in the public and the private sector, although the problem in the private sector was perceived as much less urgent. This reflects the increased recognition of corruption in the private sector as a problem but also underlines the notion that there is no pressure from the business to undertake reforms. **Businesses are aware that corruption is a serious problem also in the private sector but they prefer to see it resolved in the public sector first.**

CHART 28. PRIVATE VS PUBLIC SECTOR CORRUPTION: BUSINESS PERCEPTIONS (%)*



* % of companies, which indicate corruption in the respective sector as a "problem"
Source: Corruption Monitoring System (CMS) of Coalition 2000

CHART 29. PRIVATE VS PUBLIC SECTOR CORRUPTION: WHICH IS MORE ACUTE ACCORDING TO BUSINESS (%)*



* % of companies, which indicate corruption in the respective sector as a "very big problem"
Source: Corruption Monitoring System (CMS) of Coalition 2000

Undoubtedly, the reduction of corruption in the private sector is largely dependent on the improvement of the performance of many public institutions shaping the market. At the same time, businesses have to be more proactive and to find appropriate public-private interaction mechanisms for sustainable reduction of negative business practices involving corruption. There are many ways in which business associations can counteract corruption: advocacy for improved business environment through deregulation and simplification of administrative procedures; support for investigating journalism for unraveling cases of corruption; and carrying out of public awareness campaigns on the damage caused by corruption. But their most influential anti-corruption tool is reputation mechanisms (including the development of codes of ethics and standards of conduct).

Businesses in Bulgaria still fail to voice clearly their anti-corruption position. In 2003, only 17 to 18 percent of companies were firm in their opinion that they would not pay a bribe under any circumstances. In 2004, their share went further down to 13.4 percent.

In 2004, bribes offered by members of business associations went down year-on-year and

more companies were prepared to respond and report cases of corruption pressure to the institutions. This was primarily due to the increased likelihood of media exposure of corruption cases - a major achievement of business associations, but also to the higher rates of detection of such cases by law enforcement agencies, however unsatisfactory those rates remain.

There already is a critical mass of companies which have adopted codes of ethics and standards for socially responsible conduct – *Standard of Business Ethics*, *the Global Compact*, etc. Many local business associations have also introduced codes of conduct. Sometimes industries that are not formally organized in a business association adopt codes of ethics (e.g. the media). The outstanding problem with these codes of ethics is compliance. In most cases, business associations are perceived by managers as elitist clubs, which enhance the image of the company without requiring any strict commitments to standards for social responsibility.

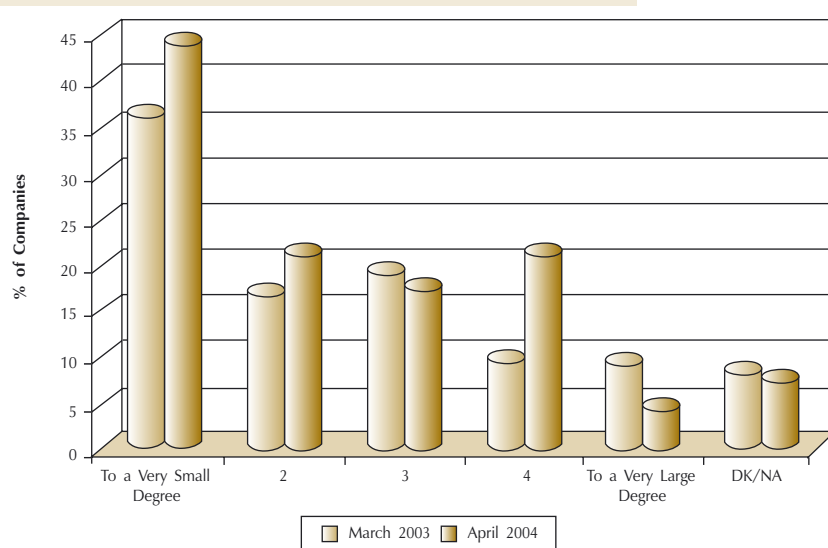
The implementation of codes of ethics depends on the ability of business associations to impose reputation sanctions on their member-companies (even expulsion) for non-compliance. There has been only one publicly known case for company exclusion on non-compliance so far in Bulgaria and this has happened in the Bulgarian Association of Information Technologies (BAIT). As a rule, this extreme measure strikes disciplining balance between long-term benefits from the membership in an association (effective information exchange, active advocacy, reduced training costs and other services, including reputation capital) and short-term benefits of unethical or irresponsible behavior.

Another untapped opportunity to restrict corruption in the private sector is the public-private partnership between business associations and the government in the public procurement process. Associations could serve

as guarantors of transparency and integrity by participating in the whole process from preparing the tender documentation, establishing criteria for assessment and monitoring to offering arbitration in cases of dispute.

The institutional weakness of business associations or employers' unions (which are not narrowly specialized) can be seen in a number of facts: they are involved mainly in quasi-political debates and general discussions on self-regulation; more often than not they are financed from activities typical for businesses, the civil society and think-tanks rather

CHART 30. SELF-REGULATION AS AN ANTICORRUPTION MEASURE: DOES IT MATTER?*



* Will ethic codes reduce corruption in the private sector?

Source: Corruption Monitoring System (CMS) of Coalition 2000

than from membership dues paid against the provision of services; their internal democratic deficit is as large as the one in the political life of the country, etc. Hence it is quite logical that businesses' mistrust of codes of conduct as major tools of business associations in overcoming corruption and unfair competition has increased. It is very telling of the overall quality of codes of ethics in Bulgaria to see some of them state that companies undertake the commitment to abide by the laws of the country. This confirms the lack of knowledge among business associations of their role in society.

5. CIVIL SOCIETY AGAINST CORRUPTION

5.1. Non-Governmental Organizations and Anti-Corruption Reforms

Bulgarian NGOs have been at the forefront of anti-corruption reforms ever since the mid-1990s. One of the **key contributions civil society** has made in this area has been **to place corruption high on the list of public concerns**. NGOs have also been instrumental in prompting government action against corruption and exert a consistent pressure for key reforms. Above all, against the background of the volatile political establishment of the last eight years, NGOs have maintained the consistency and sustainability of the anti-corruption agenda in Bulgaria.

The NGO sector owes much of its prominence in national anti-corruption efforts to its capacity to pull together substantial analytical resources and to communicate well with the media. It also has a good cooperation with international institutions and support from donor organizations and has enlisted them as key stakeholders.

NGOs have made a difference in a number of areas, most significantly in:

- Analysis of corruption. NGOs have been providing government with expertise and analyses in the development and evaluation of anti-corruption legislation and policies;
- Information and awareness. In the initial years of anti-corruption efforts, these were crucial to bringing public around to support reformist policies and be less tolerant of corruption;
- Managing to engage government in a public-private partnership through institutional dialogue in counteracting corruption;
- Pilot initiatives to create lasting anti-corruption structures and instruments within the non-governmental sector;
- Facilitating a broader international cooperation in counteracting corruption going beyond the intergovernmental formats and involving various other public and private stakeholders.

Open Government Initiative Project

The Open Government Initiative (OGI) project is implemented in Bulgaria by DPK Consulting with funding from the United States Agency for International Development (USAID) and covers activities related to institutional capacity building, prevention of corruption, enhancing the transparency and accountability, and reinforcing the rule of law, particularly in the areas of public sector auditing and public procurement.

OGI supports the efforts of civil society to enlist broader public participation in the fight against corruption and encourages cooperation with state institutions, the media, and the private sector. Since the outset of the project, there have been three calls for proposals for anti-corruption projects with fourteen projects of civic organizations implemented in 2003 and 2004.

5.1.1. Public-Private Partnership

Public-private partnerships were not the most obvious choice of going about anti-corruption reforms in 1997, and not only in Bulgaria. Bulgarian non-governmental organizations could be credited for managing to engage government in an area that was not only sensitive but also required considerable commitment of will and resources. Eight years later it could be safely said that **cooperation between the civil sector and government is as a major prerequisite for successful anti-corruption reforms**. At the same time, the interaction between state and civic organizations involves a number of inherent strains.

Anti-corruption initiatives and efforts launched by NGOs in Bulgaria continued to face an essentially ambivalent attitude on the part of the state. Since corruption came on the agenda, **governments have wavered between the aspiration to identify with the values of transparency and integrity, on the one hand, and the reluctance to publicly acknowledge corruption, particularly at its higher ranks**, on the other. The inconsistent anti-corruption efforts and the discrepancy between political rhetoric and actual policies contributed to the alienation between government and the public. Among other things, this has enhanced the need for greater role of NGOs in anti-corruption.

Attitudes in parliament towards corruption were equally marked by ambivalence as the parliamentary bodies, trusted with tackling it, could not incorporate anti-corruption priorities in the agenda setting of the legislature. This adversely affected the anti-corruption cooperation between governing majorities and non-governmental organizations.

Another factor undermining public-private partnerships has been partisanship. Political parties and politicians frequently tried to present a better public image by associating with NGO anti-corruption efforts.

This has hampered both the effectiveness of NGOs and the credit they take for their effort.

Public-private partnership at the local level also faced certain problems. Many pre-election commitments of the local authorities to participate in joint anti-corruption initiatives with the civic sector were not met at all or failed to lead to the creation of permanent mechanisms of public-private partnership or to any tangible anti-corruption results.

Despite these challenges public-private partnerships have become the most effective mechanism through which anti-corruption reforms were implemented.

These partnerships have come in numerous forms. **NGO experts have played important role in the discussion and assessment of draft anti-corruption legislation.** A case in point is the elaboration by *Coalition 2000* of the draft ombudsman law, its cooperation with the Customs Agency and the Ministry of Interior in identifying measures against smuggling and related corruption, as well as with the Ministry of Labor and Social Policy and the Ministry of the Economy in developing extensive measures to restrict unregistered employment and reduce the regulatory burden of the state.

Monitoring the integrity of public services of high corruption risk is another area where *Coalition 2000* and a number of watchdog organizations have been active. NGOs have received and investigated reported cases of corruption and, in partnership with state institutions and the media, helped put in place the conditions for improved public accountability and transparency and for curbing corrupt practices at the various levels of government. A local level anti-corruption network was also established on the initiative of *Coalition 2000* in partnership with non-governmental organizations to monitor corruption risk zones in the municipal administration.

Civil society organizations outside the capital city Sofia are increasingly active. This is crucial as policies undertaken by the government need to be supplemented local level effort engaging citizens and thus ensuring that policies keep their relevance and government receives feedback. For example, since 1997 *Coalition 2000* and other NGOs have initiated the establishment of local institutions of the ombudsman type (public mediators). Even before an adequate legal framework was put in place, similar institutions were set up in a number of municipalities (Sofia, Veliko Turnovo, Razgrad, Zavet, and others) and started operating upon the initiative of civil society in cooperation with the local authorities.

It should also be noted that **non-governmental organizations themselves continue to be vulnerable to corruption.** Enhanced accountability is needed for two main reasons: the majority of NGO funding in Bulgaria comes from foreign public sources; there could be justified public mistrust of those non-governmental organizations which thrive on political protection and privileges.

5.1.2. *Coalition 2000*

Coalition 2000 is an initiative of Bulgarian non-governmental organizations which brings together the efforts of civil society and state institutions. **The efforts of *Coalition 2000* and its partners have shaped the overall civil society involvement in combating corruption since 1997.** Although initially seen as ambitious, all of *Coalition 2000*'s initial goals have been achieved:

- A no-go area for public discussion some years ago, **anti-corruption is now of mainstream concern in the policy agenda.** As a result mostly of *Coalition 2000*'s monitoring system, corruption was acknowledged by political elites and recognized as a problem by the general public. The Coalition has shown not only that **corruption can be measured** but that **measurement is crucial in its successful combat.** The regular publication of data on the actual prevalence of corruption in society has given the public an instrument of advocacy and pressure, and has allowed government to better tailor its policies. *Coalition 2000*'s monitoring system has been included as part of the UN Anti-Corruption Tool Kit and is routinely referred to by various international institutions, including the European Commission, World Bank, IMF, UNDP and others.
- By informing the policy process, *Coalition 2000*'s quarterly indexes on the spread of corruption have made a difference in a number of areas, lately on the hidden economy. Data on the gray economy prompted the government to introduce changes to employment legislation. The Coalition's subsequent monitoring revealed a 25% drop in the share of the hidden economy in labor relations while highlighting remaining concerns in other areas. Thus, ***Coalition 2000*'s watchdog mechanism has served both as an early warning and as a policy effectiveness feedback instrument.**
- Anti-corruption is now an avowedly strategic concern for government, and policy in this area is sought to be a comprehensive mix of prevention and enforcement. Bulgaria has aligned its laws with the best international standards and is actively contributing to their further development. **The adoption of the *Coalition 2000* Action Plan** by a broad national consensus at the 1998 Policy Forum **has helped structure the entire policy and institutional anti-corruption environment in the country** by outlining the key challenges and solutions in the field of government, media and civil society, business and international cooperation. In an ultimate acknowledgment of the role of *Coalition 2000* in this process, the government based the better part of its 2001 Anti-Corruption Strategy on the Action Plan of the Coalition. Coalition experts made valuable contributions to the drawing of the strategy. The document highlights the need to "build mechanisms and effective partnership practices between state institutions, non-governmental organizations and privately-owned media in areas such as democratic control over the administration's activities, civil rights protection, independent oversight and anti-corruption awareness and

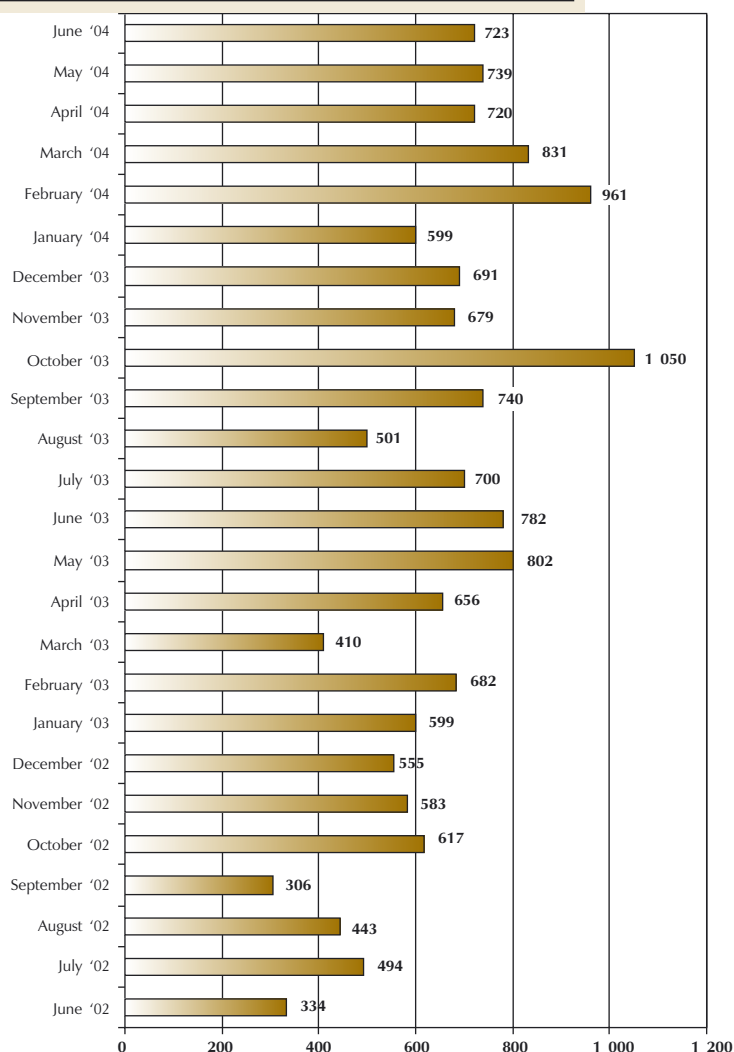
advocacy campaigns". The strategy acknowledges the important role of *Coalition 2000* and Transparency International-Bulgaria.

- The anti-corruption experience of the Coalition has a growing international recognition. Regional anti-corruption projects such as Southeast European Legal Development Initiative (SELDI) have drawn on the public-private model of *Coalition 2000* in bringing together NGOs from a number of countries in the region.

5.2. The Role of Media in Anti-Corruption

The media play a very important role in shaping popular perceptions and attitudes to corruption. As shown by the *Coalition 2000* Corruption Monitoring System, roughly half of the adult Bulgarian citizens get information about instances of corruption from broadcast and print media.

CHART 31. AVERAGE MONTHLY NUMBER OF CORRUPTION-RELATED ITEMS IN THE MEDIA



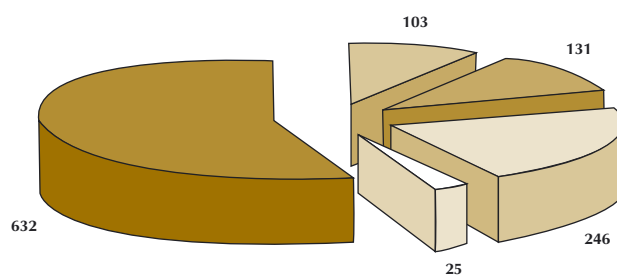
Source: Media Monitoring by Coalition 2000

The regular media monitoring conducted by *Coalition 2000*⁹ indicates that both **print and electronic media devote increased attention to corruption**. While with the emergence of anti-corruption initiatives in 1998 the average monthly number of corruption-related items was about 150-200, in 2002 it reached 400 pieces, and by 2004 it had risen to more than 700 on average, regardless of whether the respective period was marked by a major corruption-related news story or public scandal.

⁹ The monitoring covered 32 national media, of which 10 dailies, 8 weeklies, 7 internet media, all 3 national television stations, and 4 radio stations. Forty-eight weekly and 12 monthly reports have been prepared, as well as 7 topical analyses on some of the corruption-related stories that received most extensive media coverage (such as corruption in higher education, the Sofiyski Imoti affair, the selling of low-price flats to government officials, the scandals at the National Protection Service, the grain siphoned off from the strategic grain reserve, etc.).

In the late 1990s, corruption was typically discussed by the media in general and non-personified terms. Now, increasingly corruption coverage deals with specific cases. Print media, which tended to resort to sensationalism, are gradually adopting a much more professional attitude in the investigation of this issue. Already there are reporters who write unbiased pieces on both concrete cases of corruption and on the underlying causes of corruption.

CHART 32. DEGREE OF CONCRETENESS OF CORRUPTION-RELATED ITEMS IN THE MEDIA (AUGUST 2004)



- Corruption as a phenomenon in most general terms
- Corruption in a particular public sphere
- Corruption in a particular state authority, public organization, professional group
- Specific data on corruption
- Specific case of corruption

Source: Media Monitoring by Coalition 2000

One notable development has been the **shift of focus from petty to high-level corruption** without this being used for party political confrontation (Table 18). If soon after 1997 the topic of corruption was usually brought up in the context of political antagonism, in recent years the public debate on corruption has shifted away from partisanship and more towards a broader civic agenda. The subject of anti-corruption is increasingly treated in the context of the need to establish a political culture of transparency and accountability. The perfunctory partisan discourse is gradually being replaced by an understanding of the underlying causes of corruption.

Further, there has been a relative increase in the number of success stories on anti-corruption measures and a considerable increase in the average number of items reporting successful punishment of corruption.

Political corruption has increasingly been spotlighted by the media and journalistic interest in it has been sustained by disclosures of corrupt abuse of power, but also by the overall process of adoption of modern standards of transparency in the context of the country's European integration.

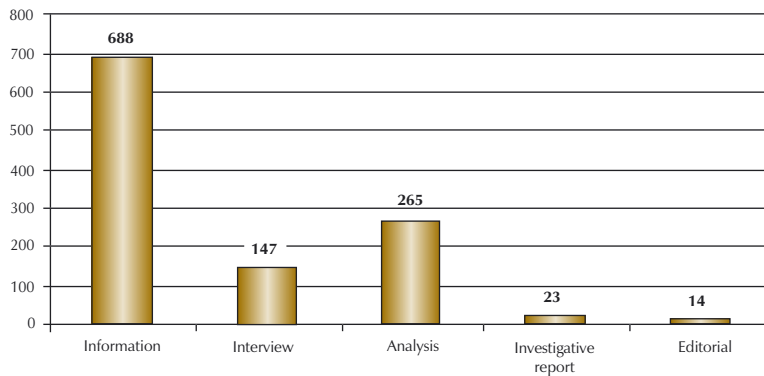
Undoubtedly, the media rely on civic organizations and initiatives for assessments of the scope of corruption, as well as for information on the related perceptions and attitudes of Bulgarians. The level of trust achieved between the media and non-governmental organizations in the context of anti-corruption critique of governments is an important step toward reinforcing civil society.

TABLE 18. DISTRIBUTION OF CORRUPTION-RELATED ITEMS BY TOPIC (OCTOBER 2004)

Topics	Anti-corruption Measures	Corrupt Practices	Investigations, arrests
Governance	15	157	-
Cabinet	22	38	8
Public administration	17	31	14
Customs administration	4	40	5
Army	1	6	-
Local government	2	26	5
Statements by ministers, deputy ministers, and other public figures	25	38	-
Political Parties	8	45	-
Legislature	-	-	-
Laws and draft laws	11	9	-
Parliament	-	2	-
Members of Parliament	1	2	-
Statements by MPs and other public figures	7	17	-
Judiciary and Police	1	8	1
Courts	1	43	-
Prosecution	2	3	1
Investigation	2	-	5
Police	25	20	34
Statements by representatives of the judiciary, the police and commentaries	4	10	-
Society	-	1	-
Healthcare	4	30	19
Education	14	10	-
Other	1	6	-
Economy	-	11	-
Public Procurement	1	4	-
EU Funds	1	3	-
Privatization	-	3	-
Business	2	13	1
Non-governmental and international organizations	1	-	10
Bulgarian NGOs	7	2	-
International organizations	35	5	-
Media	7	21	1
Total	221	604	102

Source: Media Monitoring by Coalition 2000

CHART 33. DISTRIBUTION OF CORRUPTION-RELATED ITEMS BY GENRE



Source: Media Monitoring by Coalition 2000

Investigative journalism is the most high-risk professional commitment as well as the costliest investment and serious media cannot afford to ignore it. It is still underused, though, since shortage of financial resources and a heavy reliance on advertising, typical of a most Bulgarian media, drive them to focus on more conventional reporting genres and general information. Investigative journalism is still viewed as a luxury that is not necessarily warranted and one that may, in the event of a clash of interests, affect the survival of the respective media.

Journalistic disclosures still have a very low “life expectancy”. The blame is to be shared by the respective reporters/media and public authorities who for the most part still tend to ignore the investigative reports. On the other hand, there are also the stories aimed at discrediting particular public figures or organizations. Smear campaigns are part of the media landscape and tend to proliferate in periods of major political events, election times in particular. It is a professional test for journalism how susceptible the media are to this type of abuse of their public power, more often than not proving to be the turf of former and current officials in the security sector. One alarming tendency, however, is the tacit taboo in the professional community on publications concerning **corruption in the media** themselves.

The media have undeniably managed to demonstrate that a wide range of dubious practices in Bulgarian society are in fact corruption. They have raised public sensitivity and **encouraged intolerance to a broad spectrum of corrupt actions**. They have also coined a matching discourse for the public to use in the debate on corruption.

The media are now not simply reporting law enforcement action against corruption but publish facts which need further investigation. In this, besides the usual methods reporters rely more on **whistleblowers** and on **non-governmental organizations**. There are already numerous good practices where the media, civic organizations, law-enforcement bodies, and the public administration form effective coalitions. They, however, rarely outlive the particular purpose of their formation.

In the last few years certain pieces of legislation related to judicial and economic reform were highlighted by some print and broadcast media because of the corruption risks involved. This was a good example how the media can do valuable preventive work as well.

Implementing professional and ethical journalistic codes is an important step towards enhancing media accountability. The fact that the code of ethics of journalists adopted in late 2004 was signed by major media provides some reason for hope. The code obliges the signatories to verify their sources and not to quote anonymous sources unless the information provided is of public importance; to differentiate information from commentary; to specially designate any paid advertisements and commercial messages, etc.

5.3. Anti-Corruption Education

Education is arguably the most powerful instrument in shaping social attitudes. In acknowledging its role in anti-corruption, the *National Strategy for Counteracting Corruption* highlights the need to raise quality standards in secondary and higher education; to implement a policy aimed at restoring and reinforcing the authority and status of teachers; to develop and implement a national policy for monitoring and improving the quality of education through the system of staff recruitment in the various sectors, and to enhance the role of the national education system for the anti-corruption education and awareness of the nation.

Aiming to leave a lasting impact in the field of anti-corruption, *Coalition 2000* has also been successful in **bringing Bulgaria's young into the broader rule of law constituency**. As a result of the Coalition work, there are now about 350 secondary schools in Bulgaria which have expressed interest in teaching anti-corruption as a part of the civic education program or as an optional subject.

A working group put together by the Coalition with Ministry of Education representatives, teachers and NGOs is in the process of laying the long term framework for anti-corruption education by elaborating a policy **Concept Paper on the formal introduction of anti-corruption education for the school year 2005/06**. The working group, recognizing the need of teaching materials for teachers and students, promoted the preparation of resources such as training manuals, readers, course curriculum, online learning course. Upon the request of the Ministry of Education *Coalition 2000*' training resources were distributed to schools and educational district administrations with the recommendation to be used as teaching tools.

The Coalition has also prompted similar advancements in the universities where a number of optional anti-corruption courses were taught. For the first time anti-corruption was introduced in the curriculum of the Pedagogical Department at Sofia University as well as in the teaching program for 2004-2005 academic year at the Information and Qualification of Teachers Department, Sofia University.

The Small Grants Program of *Coalition 2000* was another important instrument to encourage anti-corruption education and to establish a nation wide network of NGOs working in this area. In different Bulgarian towns **anti-corruption instruction at the secondary schools and onsite classes were piloted**. Within these projects support was received from local and district authorities in introducing the "Open Doors" initiative

(pupils' visits to municipality offices, police, court, etc.) which was aimed at fostering a democratic culture, anticorruption values, etc. through enhancing the knowledge about the institutions, transparency and good governance, human and civil rights.

However, efforts to teach anti-corruption to students could be jeopardized by graft in the very schools and universities. The latter, if they are to be successful in teaching anti-corruption schools and universities, need to promote integrity in their administration as well. In 2003, the data from the *Coalition 2000* Corruption Monitoring System and other studies in the area of higher education challenged the assumption that this public service tended to be less affected by corruption. University faculty and administrative staff were ranked at one of the leading positions by amount of corruption pressure exerted. The proportion of those who have experienced corruption pressure from university teachers ranges between 12 and 21%, and as regards administrative staff, between 3 and 12% of all who have had contacts with these groups. Besides the regular monitoring of corruption conducted by *Coalition 2000*, which provides information about the scope of the problem in the area of higher and secondary education, there have been a number of specific disclosures regarding bribes solicited at universities. A number of mechanisms have also been identified for corrupt practices – making students purchase textbooks and other works authored by particular faculty members; undue payment for administrative services and undue examination fees; issuing of false diplomas, etc.

As in other areas of anti-corruption reforms, partnership between government and civil society would be crucial to tackle these challenges. These should involve both the Ministry of Education, the administration of state-run and private universities, parents' associations, NGOs, regional educational inspectorates and other institutions. There have been already been some pilot efforts (eg electronic register of the regulatory framework of education and educational credits) which should be developed further.

CONCLUSION

There are several factors that determine Bulgaria's entry into the crucial phase of its anti-corruption reforms. First, there is a positive trend, captured both by *Coalition 2000's* Corruption Monitoring System and by international surveys after 1997, of a **decrease of administrative corruption** that should be developed further. There were some indications in late 2004 of a marginal increase in corruption prevalence compared to earlier that year. This implies that anti-corruption policies may be exhausting their effect and need to be consolidated and expanded. Second, **political and large-scale corruption, which has been only slightly affected by reforms so far**, impacts negatively on competitiveness and economic growth. This may lead to a vicious circle in which low economic efficiency bolsters corruption and vice versa. Third, the success of **Bulgaria's integration into the European Union** depends on how it confronts corruption. Corruption hampers the country's accession process in several ways: it weakens its institutions and impedes the implementation of common EU rules and policies; it heightens the risk of embezzlement and poor management of the EU pre-accession and structural funds; and it facilitates the "export" of crime to the Union.

The challenges and opportunities of EU membership require that anti-corruption reforms be an integral part of Bulgaria's overall modernization strategy. In this context, the **priority areas of anti-corruption policy in the next few years should be a fundamental reform of the judiciary and law-enforcement and the curbing of organized crime and the hidden economy**. Anti-corruption policies should be more tailored to specific areas as well as targeted at the broader root causes of corruption:

- Continuing the development of democratic institutions. Constitutional changes should introduce improved checks and balances of the branches of government thus enhancing their anti-corruption potential. In order to meet the - as the USAID Anticorruption Strategy puts it - **"dual challenges of grand and administrative corruption"**¹⁰ mechanisms of democratic control should be reinforced. Specialized anti-corruption units should receive more authority and higher profile. Legal provisions on political party financing, lobbying, campaigning and the restriction of political intervention in the judiciary, economy and media should be considered with priority.

¹⁰ USAID Anticorruption Strategy, January 2005, p.2

- An effective and stable judiciary that is free from corruption is the most powerful agent of the rule of law and anti-corruption. Thus, **anti-corruption reforms in the judiciary and law-enforcement should remain a priority area in Bulgaria's progress towards EU accession.** Several key challenges must be met: completing the reform in the pre-trial phase of the criminal process; transforming the role and functions of the investigation and prosecution bodies¹¹, making judicial bodies and law enforcement improve their information exchange and cooperation.
- **Market economy institutions should be strengthened to encourage legitimate business.** Economic freedom and competition need to be bolstered, business should be burdened less by bureaucracy, and business ethics should be promoted. Bulgaria's economic growth is held back by a lack of consistent policy to promote competition, as well as by monopolies established through political corruption. Bulgarian business is still debilitated by a heavily bureaucratized administrative control system which leads to excessive costs and corruption. Corruption schemes allowing a particular bidder to win in **public tenders and concessions** still exist. It is also important to set clear and transparent provisions on the use of EU pre-accession funds and to build a reliable system for internal and independent oversight of their programming and management.
- **Reducing the influence of organized crime in government and the economy.** Suppressing the economy of crime would be an important step towards reducing corruption practices which sustain it in the first place. The customs administration is still implicated in significant corruption and customs fraud in export/import deals and smuggling operations. Business and its associations are crucial stakeholders in ridding the economy of its gray sector and corruption and should be thus involved in anti-corruption policies. Bringing the hidden economy below 20% of GDP before the time of Bulgaria's accession to the EU is a bold but realistic target.
- **Civil society should maintain its active role in anti-corruption initiatives.** NGO efforts should venture into areas where reform is underdeveloped or is yet to be launched, such as health care reform, education, and social security. Reducing corruption in these public services would indicate that the country is irreversibly on the road of successful and sustainable reforms.

A strategy of social modernization has to rely on an effective anti-corruption policy. Even a well-designed anti-corruption program would fail to bring about lasting impact if implemented outside the overall philosophy of legal, institutional, social and economic reforms. Anti-corruption reforms should follow a holistic approach and when properly coordinated should manage to increase the risk, cost and insecurity for

¹¹ The case for these reforms has been extensively argued by *Coalition 2000* and the Center for the Study of Democracy in the period 2002-2004. See Judicial Anti-Corruption Program, Sofia, 2003 and Corruption Assessment Report 2003.

both parties to a corruption deal. As long as corruption is perceived as a low-risk, low-cost, high-profit endeavor, the efforts towards its reduction will be of small consequence.

Effective coordination between all stakeholders - the legislature, the executive, and the judiciary with all their separate agencies; the central and local governments and institutions; NGOs and the media - is a must of the anti-corruption process. **Civil society should keep the momentum of its anti-corruption initiatives and maintain its crucial watchdog function.** The latter, together with the partnership of public and private institutions are the key factors for the success of anti-corruption reforms.